



Derby City Council

COUNCIL CABINET
9 November 2016

Report of the Cabinet Member for Regulatory
Services

ITEM 9

Communities, Environment and Regulatory Services Revised Enforcement Policy

SUMMARY

- 1.1 The Communities, Environment and Regulatory Services Enforcement Policy was created in 2009 and requires updating to reflect changes in relation to the introduction of the Regulators' Code and other enforcement powers that are now available.

RECOMMENDATION

- 2.1 To approve the revised Communities, Environment and Regulatory Services Enforcement Policy set out in Appendix 2, and that the policy is adopted forthwith.

REASONS FOR RECOMMENDATION

- 3.1 The Council have a statutory duty to have regard to the Regulators' Code. The updated Enforcement Policy will reflect these changes and formal endorsement of the revised policy is required.
- 3.2 The Policy aims to promote business growth and support by setting out a clear approach to how decisions relating to enforcement will be taken.



Derby City Council

COUNCIL CABINET **9 November 2016**

Report of the Strategic Director for Communities and Place

SUPPORTING INFORMATION

- 4.1 Local Authorities are required by section 24(2) of the Legislative and Regulatory Reform Act 2006 to have regard to the Regulators' Code. This document was issued in April 2014 by the Better Regulation Delivery Office (which became part of Regulatory Delivery in March 2016) as a statutory code of practice encouraging local authorities to adopt a risk based, proportionate, targeted and flexible approach to enforcement which does not impose unnecessary burdens on those who are regulated.
- 4.2 There has been a need to review and update the current Communities, Environment and Regulatory Service Enforcement Policy in order to properly demonstrate how we are meeting the Code.
- 4.3 Communities, Environment and Regulatory Services are responsible for enforcing a wide range of legislation, encompassing Environmental Protection, Food, Health and Safety, Private Sector Housing, Trading Standards, and Licencing, which impact on local residents, the business community and the wider environment.
- 4.4 Powers are delegated to officers to take enforcement action where necessary. The decision to take (or not take) enforcement action is a serious one that may have implications for all involved and it is important that there is a policy in place that ensures transparency, fairness and consistency. Any investigations undertaken can result in both informal and formal actions being taken to ensure compliance with the law.
- 4.5 The enforcement policy emphasises how we deliver enforcement functions in relation to the 'principles of good law enforcement' which is central to the Regulators' Code.

OTHER OPTIONS CONSIDERED

5.1 None.

This report has been approved by the following officers:

Legal officer	Lucie Keeler
Financial officer	-
Human Resources officer	-
Estates/Property officer	-
Service Director(s)	John Tomlinson
Other(s)	-

For more information contact: Background papers: List of appendices:	Michael Kay 01332 641940 michael.kay@derby.gov.uk None Appendix 1 Implications Appendix 2 Communities, Environment and Regulatory Services Revised Enforcement Policy
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IMPLICATIONS

Financial and Value for Money

- 1.1 There are no direct financial implications arising from this report.

Legal

- 2.1 By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulators' Code was issued under parliamentary approval. As specified, regulators must have regard to the Code when determining policies, setting standards or giving guidance in relation to their duties. By updating the Enforcement Policy for Communities, Environment and Regulatory Services, the Council will ensure its compliance with the Regulators' Code and other legislation.

Personnel

- 3.1 None directly arising.

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- 4.1 None directly arising.

Equalities Impact

- 5.1 There are no workforce or community equality issues arising from this report.

Health and Safety

- 6.1 None directly arising.

Environmental Sustainability

- 7.1 None directly arising.

Property and Asset Management

- 8.1 None directly arising.

Risk Management and Safeguarding

- 9.1 Not adopting the Policy could leave the Council vulnerable to legal challenge which could result financial penalties being imposed against us.

Corporate objectives and priorities for change

- 10.1 The proposals will support the priority outcomes of **protecting vulnerable children and adults, promoting health and well-being, improving housing, supporting job creation and regenerating the city and delivering services differently.**

DERBY CITY COUNCIL

COMMUNITIES

ENVIRONMENT &

REGULATORY SERVICES

ENFORCEMENT POLICY

(INSERT DATE)

CONTENTS

No.	Item	Page No
1	Introduction	
2	Legal Status of this Enforcement Policy	
3	Scope and Meaning of Enforcement	
4	Obtaining a copy of the Policy and complaints about the Policy	
5	General Principles	
6	Notifying Alleged Offenders	
7	Enforcement Action	
8	Decisions on Enforcement Action	
9	Primary Authority Partnership Scheme and Enforcement Provisions	
10	Liaison With Other Regulatory Bodies and Enforcement Agencies	
11	Considering the views of those affected by offences	
12	Protection of Human Rights	

13	Partnership Working	
14	Review of the Enforcement Policy	

1 INTRODUCTION

- 1.1 This document sets out what businesses and others being regulated can expect from Derby City Council Communities, Environment and Regulatory Services (CE&RS) and its Enforcement Officers.
- 1.2 This policy commits the Council to good enforcement practice with effective procedures and clear policies. Where the Council is referred to in this document it means all the CE&RS.
- 1.3 The Policy is not exhaustive in its application. It is recognised that some services within CE&RS will have specific policies/standards/guidance (which may be statutory in nature), that will either co-exist alongside this policy, or in certain circumstances supersede it.
- 1.4 The Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Code. In certain instances we may conclude that a provision in the Policy is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Policy will be properly reasoned, based on material evidence and documented.
- 1.5 This document has been prepared with regard to the current principal legislation and statutory guidance including:
 - The Regulatory Enforcement and Sanctions Act 2008 (The RES Act)
 - Regulatory Reform Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009SI665/2009 (The CRE Enforcement Order)
 - Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order)
 - Legislative and Regulatory Reform Act 2006 (LRRRA)
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007
 - Regulators' Code (RC) (April 2014)
 - Police and Criminal Evidence Act 1984
 - Human Rights Act 1998
 - Code for Crown Prosecutors

- Data Protection Act 1998
- The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards

1.6 The RES Act established the Local Better Regulation Office which has been renamed Regulatory Delivery (RD). It also imposed upon the Council a duty to:

- (a) have regard to any guidance given to a Local Authority by RD;
- (b) comply with guidance where we are directed to do so by RD;
- (c) have regard to any list of enforcement priorities published by RD

1.7 The LRRRA, Part 2, requires us to have regard to the Principles of Good Regulation in that we carry out our regulatory activities in a way which is proportionate, accountable, consistent, transparent, and targeted to situations which need action.

1.8 The Council's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

1.9 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency and these are detailed in full further in this policy document.

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

1.11 If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under The RES Act we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to RD if appropriate.

2 LEGAL STATUS OF THIS ENFORCEMENT POLICY

2.1 The Policy was approved by Derby City Council Cabinet on INSERT DATE.

2.2 This policy is intended to provide guidance for Enforcement Officers, businesses, consumers and the public. Each case will be considered on its own merits and circumstances having regard to this policy.

3 SCOPE AND MEANING OF 'ENFORCEMENT'

- 3.1 This Policy applies to all the legislation enforced by officers of Derby City Council CE&RS.
- 3.2 'Enforcement' includes any criminal or civil action taken by Enforcement Officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of The RES Act, the term 'enforcement action' has been given a general statutory definition, which is action:
- (a) to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach;
 - (b) taken in connection with imposing a sanction for an act or omission; and
 - (c) taken in connection with a statutory remedy for an act or omission
- 3.4 A list of specific 'enforcement actions' is provided in article 2 of the CRE Enforcement Order, which applies to Part 2 of The RES Act and the Primary Authority Scheme. This means that if: you are a business or organisation registered with the Primary Authority Scheme, we are proposing to take action against you, and that action is one of those listed then, unless one of the permitted exemptions applies, we will contact your Primary Authority to give notice of the enforcement action we propose to take against you. (See Paragraph 9 below in relation to the Primary Authority Scheme.)
- 3.5 By this document the Council intends to enable Enforcement Officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. The Council also aims to ensure that its own Enforcement Officers interpret and apply their legal requirements and enforcement policies consistently and fairly.
- 3.6 Whilst not a direct form of enforcement, officers will seek to raise awareness and increase compliance levels by making public, by whatever medium is deemed appropriate, details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so.

4 OBTAINING A COPY OF THE POLICY AND COMPLAINTS ABOUT THE POLICY

- 4.1 This Policy is available on the Derby City Council website at INSERT WEBLINK
- On request, this Policy will be made available on tape, in Braille or large type.
- 4.2 If you are unhappy with any decision that is made, initially you should try and resolve the issue with the Enforcement Officer. However if this fails you should discuss the matter with their manager. If you feel that you are still not satisfied then the Council has a Corporate Complaints procedure, and full details how to make a formal complaint can be found on the Council website at INSERT WEBLINK

- 4.3 Additionally, there will sometimes be a legal right to appeal an enforcement decision, such as the right to appeal certain licensing decisions or legal notices to the Magistrates' Court. Where such a right exists, it will have precedence over the Council's Corporate Complaints Procedure.

5 GENERAL PRINCIPLES

- 5.1 Our principles are informed by The Regulators' Code which took effect on 6 April 2014, the Enforcement Concordat and the Guidance of RD as to how to apply these documents.
- 5.2 The six principles of the Regulators Code are:
1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
 2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
 3. Regulators should base regulatory activities on risk.
 4. Regulators should share information about compliance and risk.
 5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
 6. Regulators should ensure that their approach to their regulatory activities is transparent.
- 5.3 Prevention is better than cure and our role, therefore, involves actively working with businesses to advise on, and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or members of the public, we will do so.
- 5.4 Where we consider that formal enforcement action is necessary each case will be considered on its own merits.
- 5.5 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code.
- 5.6 In accordance with the Regulators' Code, the approach of the Council to the sanctions and penalties available to it, will aim to:
- (a) change the behaviour of the offender;
 - (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
 - (c) eliminate any financial gain or benefit from non-compliance;
 - (d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (e) be proportionate to the nature of the offence and the harm caused;

- (f) restore the harm caused by regulatory non-compliance, where appropriate; and
- (g) deter future non-compliance

For more information about the Regulators' Code [click here](#)

- 5.7 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 5.8 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 to take formal action. This may include actual harm or loss or the impact on the wellbeing of the individual or potential or actual harm to the environment.
- 5.9 Derby City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.10 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to;
 - Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigations Act 1996
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000 Criminal Justice and Police Act 2001
 - Crime and Disorder Act 1998
 - Protection of Freedoms Act 2012 (Code of Practice – Powers of Entry December 2014)
 - Anti-social Behaviour, Crime and Policing Act 2014
 - in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities
- 5.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code. 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.

6 NOTIFYING ALLEGED OFFENDERS

- 6.1 If we receive information, for example from a complainant, that may lead to formal

enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public or where notification would defeat the purpose of the enforcement action.

- 6.2 During the progression of enforcement investigations or enforcement actions, business proprietors or individuals and witnesses will be kept informed of progress.
- 6.3 Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7 ENFORCEMENT ACTION

- 7.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- No action
- Informal Action and Advice
- Fee Paid Training/Advice
- Fixed penalty Notice
- Penalty Charge Notice
- Formal Notice
- Compliance Support
- Seizure
- Forfeiture Proceedings
- Tobacco restriction Orders
- Taking Animals into Possession
- Undertakings and Injunctive Actions under the Enterprise Act 2002 and other Civil Actions
- Refusal/Suspension/Revocation/Review of a licence
- Simple Caution
- Prosecution
- Proceeds of Crime Applications
- Prohibition
- Statutory Orders
- Compulsory Purchase Orders
- Restorative Approach
- Penalty Notices For Disorder (PNDs)

- 7.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. The Council reserves the right to escalate its level of enforcement action, having regard to the criteria in Paragraph 7.3 of this policy.

- 7.3 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:
- (a) The seriousness of the compliance failure.
 - (b) The past and current performance of any business and/or individual concerned.
 - (c) Any obstruction on the part of the offender.
 - (d) The prevalence of the offence within the community.
 - (e) The risks being controlled.
 - (f) Statutory guidance.
 - (g) Codes of Practice.
 - (h) Any legal advice.
 - (i) Policies and priorities of the Government, the Council, and related Committees.
 - (j) A person's age in relation to young people (termed 'juveniles') age under 18.
 - (k) The existence of a Primary Authority Agreement.
- 7.4 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail, is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender and the complainant of the reasons for taking no action.
- 7.5 For minor breaches of the law we may give verbal or written advice for which we may charge a fee. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- 7.6 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.
- 7.7 Failure to comply could result in an escalation of enforcement action.
- 7.8 We may request that the alleged offender undertakes training for a fee.
- 7.9 Certain offences where prescribed by legislation are subject to a Fixed Penalty Notice (FPN). They are recognised as a low-level enforcement tool and enable a defendant to avoid prosecution and a criminal record. Where legislation permits an offence to be dealt with by way of a FPN, we may choose to issue a FPN on a first occasion, without any prior warning.

- 7.10 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, the Council will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation.
- 7.11 Certain offences where prescribed by legislation are subject to a Penalty Charge Notice (PCN). Where legislation permits an offence to be dealt with by way of a PCN without a 'notice of intent' process, we may choose to issue a PCN on a first occasion, without any prior warning.
- 7.12 In circumstances where a person or body corporate fails to accept or pay a PCN, then in order to maintain the integrity of this legislative regime, the Council will consider an escalation of enforcement action. This will include consideration of civil action to recover the debt incurred by the by the Council.
- 7.13 A failure to pay a FPN or PCN may be a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery commenced.
- 7.14 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities, these include (but are not limited too) improvement notices, prohibition orders and notices, suspension notices abatement notices and community protection notices. Notices may require activities to cease immediately or premises to close, where the circumstances relating to food safety, health and safety, housing standards, environmental damage or nuisance demand. In other circumstances, the time allowed to comply will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for the particular notice.
- 7.15 All notices issued will include details of any applicable appeals procedures.
- 7.16 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], the Council may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, the Council may then charge the person/business served with the notice for any cost we incur in carrying out the work.
- 7.17 Where businesses are persistently non-compliant and other approaches to achieving compliance has been unsuccessful, compliance support may be offered to the business. This intervention is for businesses that are seriously failing to meet the legal minimum standards. It is hoped that working with the business to identify route cause of repeated non-compliance and any barriers which may exist. The outcome of a compliance support model is an action plan to 'remedy' failings by addressing underlining problems. Action plans are drawn up and agreed with business owners to get buy in and commitment. Failure for businesses to respond positively to the compliance support model will result in formal action being seriously considered. Compliance Support, if successful, will make cost savings compared to proceeding straight to formal action.

- 7.18 Certain legislation enables authorised Enforcement Officers to seize goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods, we will give the person from whom the goods are taken an appropriate receipt itemising the goods/equipment that have been seized and advise them of their statutory rights.
- 7.19 Forfeiture proceedings may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, officers will make an application for forfeiture to the Magistrates Court or seek from the defendant a voluntary forfeiture.
- 7.20 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 sale order. The effect of such an order is to prohibit a premises or a person from selling tobacco for a period of time up to one year.
- 7.21 We may consider where circumstances permit, taking animals into possession and applying for Orders for re-imburement of expenses incurred and subsequent disposal.
- 7.22 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that this is the most appropriate course of enforcement, Injunctive Actions or, on conviction, Criminal Behaviour Orders may be used to deal with repeat offenders; dangerous circumstances; or consumer/environmental/public health detriment.
- 7.23 Action under the Enterprise Act 2002; proceedings may be brought where an individual or organization has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:
- (a) Informal undertakings.
 - (b) Formal undertakings.
 - (c) Interim Orders.
 - (d) Court Orders.
 - (e) Contempt Proceedings.
- 7.24 Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then a Community Protection Notice or Public Space Protection Order will be sought to stop the activity.

- 7.25 Where there is a requirement for a business activity to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In certain cases the Licensing Committee can decide to grant, grant with conditions, or refuse the licence application. Existing licences may be revoked, reviewed or varied. Certain licensing processes are determined by legislation or by a specific policy recommended by statutory guidance.
- 7.26 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender.
- 7.27 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.
- 7.28 For a Simple Caution to be issued a number of criteria must be satisfied:
- (a) Sufficient evidence must be available to prove that the offence has been committed.
 - (b) The offender must admit the offence.
 - (c) It must be in the public interest to use a Simple Caution.
 - (d) The offender must be 18 years or over.

For details on the Home Office guidance (Circular 16/2008) Cautioning of Offenders visit:

<http://www.homeoffice.gov.uk/>

- 7.29 We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.
- 7.30 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.
- 7.31 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.
- 7.32 A prosecution will normally be considered where none of the other forms of enforcement action are considered appropriate and the individual or organisation meets one or more of the following criteria:
- Deliberately, recklessly, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others
 - Deliberately or persistently ignored written warnings or other notices
 - Endangered, or likely to endanger to a serious degree, the health, safety or wellbeing of people, animals or the environment

- An attempt to make financial gain at the expense of others
 - Assaulted or obstructed an Officer in the course of his/her duties
- 7.33 When deciding whether to prosecute the Council applies The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.
- 7.34 The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.
- 7.35 The Code for Crown Prosecutors has two tests:
- Is there sufficient evidence to provide a realistic prospect of conviction?
When deciding whether there is enough evidence to prosecute, the Council must consider what evidence can be used in court and whether it is reliable and admissible. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.
 - Is it in the public interest for the Council to bring the case to court? A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

For a copy of the Code for Crown Prosecutors visit:-

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

- 7.36 The Council either through its own Enforcement Officers or in cooperation with the Police or other Local Authority may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.
- 7.37 Deferred Prosecution Agreements (DPA's) have been introduced under the Crime and Courts Act 2013, adding an important new enforcement tool for certain prosecutors in tackling serious economic crime. Under a DPA, a prosecutor charges a company with a criminal offence but proceedings are automatically suspended. The DPA may impose a number of requirements, including paying a financial penalty or agreeing to a compliance programme. At present only the Director of Public Prosecutions and the Director of the Serious Fraud Office can use DPAs, not local authorities. However when proceedings are suspended under a DPA, no other person may prosecute the defendant for the alleged offence.
- 7.38 Prohibition will be used where there are valid grounds (e.g. there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. Such action is usually associated with food and health and safety enforcement, but there will be other occasions, for example prohibiting the sale of unsafe goods, or prohibiting the whole

of or part of a dwelling under housing legislation. Where appropriate, and in accordance with relevant guidance and legislation, these may be voluntary.

- 7.39 A range of Statutory Orders are available, for example under the Housing Act 2004 and Food Safety Act 1990 and associated Regulations. In addition to Prohibition Orders the Council may make an Interim or Final Management Order on a licensable house in multiple-occupation which allows it to take over the running of the property. Officers can take emergency remedial action to remove a Category 1 hazard where there is an imminent risk of serious harm to the health or safety of the occupiers.
- 7.40 The Council may compulsorily purchase property under the Housing Act 1985, the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981. The use of such powers will be on a case by case basis. The consent of the Secretary of State is required and compensation provisions apply.
- 7.41 A restorative approach can be used where the 'victim' and the 'offender' agree to meet. The purpose of this meeting is to provide the opportunity for the offender to acknowledge and accept responsibility for the harm caused and for the victim to have their say on the harm caused. If appropriate and required, suitable restorative actions and/or compensation may be agreed and the process may influence future behaviour and compliance.
- 7.42 Officers will consider if a Restorative Approach is appropriate and will listen to requests from both victims and offenders for such an approach to be adopted. Where a victim and offender are in agreement the Council, sometimes together with other enforcement partners, will consider facilitating a Restorative Approach to assist in the reduction of harm and/or the resolution of conflict. A Restorative Approach may be utilised separately or in conjunction with other enforcement approaches.
- 7.43 Penalty Notices for Disorder (PND) 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 PND will result in the offender being pursued in the County Court for non-payment of the debt. A PND does not create a criminal record and we may choose to issue a PND without first issuing a warning.
- 7.44 In cases where emergency prohibition procedures have been taken and where public health and safety has been put at risk, consideration will be given to issuing a press release as a deterrent message that the service will not tolerate conditions which present an imminent risk to public health.

8 DECISIONS ON ENFORCEMENT ACTION

- 8.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.

8.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s).
- (b) Senior managers from the Council.
- (c) The Council's legal advisors.

8.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with Derby City Council's Scheme of Delegation as contained the Council's Constitution.

9 PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

9.1 When a decision has been made to take enforcement action against a business and:

- (1) That business has a registered Primary Authority Partnership under The RES Act; and
- (2) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

9.2 A Primary Authority has the right to object to our proposed action and in such circumstances either they or we may refer the matter to RD.

10 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

10.1 In addition to the duties imposed upon us by The RES Act in respect of cooperating and working with Primary Authorities and the RD; we will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

10.2 Where an enforcement matter affects a wide geographical area beyond the Council 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.

10.3 The Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- (a) Government Agencies.
- (b) Police Forces.
- (c) Fire Authorities.
- (d) Statutory undertakers.

- (e) Other Local Authorities.

11 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 11.1 The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

12 PROTECTION OF HUMAN RIGHTS

- 12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial.
- Right to respect for private and family life, home and correspondence.

13 PARTNERSHIP WORKING

- 13.1 Wherever practicable we will endeavour to liaise with other relevant agencies that have a joint or complementary enforcement role to ensure a consistent and coordinated approach.
- 13.2 Before instigating formal action, the Regulatory Service will liaise with all relevant agencies where a joint or complementary enforcement role is identified. Trading Standards and Food and Safety teams subscribe to the principles of the Department for Business Innovation and Skills (BIS) Primary Authority Principle.
- 13.2 We will share intelligence with other enforcement agencies where this is practicable, beneficial and cost effective (subject to restrictions under the Data Protection Act, and other Trading Standards legislation)
- 13.4 Data sharing will be conducted through appropriate information gateways.

14 REVIEW OF THE ENFORCEMENT POLICY

- 14.1 As a result of monitoring compliance, etc. the Council reserves the right to review the policy at any time, or at least once every FIVE years.
- 14.2 On **INSERT DATE** Cabinet approved that the Director of Communities Environment and Regulatory Services be authorised to make minor amendments to the adopted policy as required to reflect changes in legislation or guidance and codes of practice where a full review of the policy is not warranted.
- 14.3 A copy of this policy is available at **INSERT WEBLINK**

