

**Exeter City Council**

# Office of the Assistant Director Environment

# Enforcement Policy

Date: August 2011

Review Date: May 2013

A summary of the policy is available in large print, on tape or in other languages on request.

## Contents

Section		Page
1	<a href="#">Introduction</a>	
2	<a href="#">Aims of the Enforcement Policy</a>	
3	<a href="#">Guiding Principles of Enforcement</a>	
4	<a href="#">Methods of Enforcement</a>	
5	<a href="#">Prosecution Policy</a>	
6	<a href="#">Appeals, Complaints and Case Review</a>	
7	<a href="#">Authority to Enforce</a>	
8	<a href="#">Liaison with Other Regulatory Bodies and Enforcement Agencies</a>	
9	<a href="#">Publicity</a>	
10	<a href="#">Contacting the Office of the Assistant Director Environment</a>	
11	Appendices <ul style="list-style-type: none"><li>• <a href="#">Appendix A – Food Safety</a></li><li>• <a href="#">Appendix B – Health and Safety</a></li><li>• <a href="#">Appendix C – Licensing</a></li><li>• <a href="#">Appendix D – Environmental Permitting</a></li><li>• <a href="#">Appendix E – Private Sector Housing</a></li><li>• <a href="#">Appendix F – Enviro-Crime Street Scene</a></li><li>• <a href="#">Appendix G – Private Water Supplies</a></li></ul>	

## SECTION 1 – INTRODUCTION

- 1.1 This document sets out the general principles to be followed in relation to enforcement and prosecution.
- 1.2 In this document ‘enforcement’ means action carried out in the exercise of, or against a background of, statutory enforcement powers. It includes not only formal enforcement action, such as prosecution or the service of a notice, but also the inspection of premises for the purpose of checking compliance with regulations and the provision of advice to aid compliance with statutory requirements.
- 1.3 Exeter City Council’s mission statement includes:  
  
***‘We will enhance Exeter as the regional capital, working with our partners to improve the quality of life for all people living, working in and visiting the city.’***
- 1.4 The Office of the Assistant Director Environment contributes to this by ensuring that the Council’s enforcement powers are used appropriately to improve food safety, health and safety at work, housing conditions in the private sector, and the quality of the environment including noise, nuisance, pest control, and dog control. Various businesses are required to obtain licenses to ensure that they operate in a safe and healthy manner and do not cause problems to their neighbours or to the wider community.
- 1.5 The Office of the Assistant Director Environment is responsible for the implementation of an extensive range of enforcement powers.
- 1.6 This policy details the standards and guidance that will apply when officers undertake their regulatory duties.
- 1.7 Much of the legislation that the Council enforces sets out what must be achieved, rather than how it must be done. Guidance on how an outcome might be achieved is often set out in codes of practice or guidance notes. Where there is advisory material available describing good practice and inspectors will have regard to this. In considering whether good practice has been adopted inspectors will use their judgment about the extent of the risk and the actions that have been taken to counter those risks to ensure proportionality.
- 1.8 In some cases the legislation is highly prescriptive as to what must be done and in such circumstances the discretion of the Council as duty holder and the enforcer are limited.
- 1.9 This Enforcement Policy is intended to provide guidance for officers, businesses, consumers and the general public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

- 1.10 The Council has signed and agreed to implement the Government's Enforcement Concordat which emphasises better regulation and sets out the principles of good enforcement practices such as:
- Published service standards
  - Openness and helpfulness
  - A published and responsive complaints procedure
  - Risk based enforcement action
  - Consistency of enforcement
- 1.11 This Enforcement Policy accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, Freedom of Information Act 2000 and the Regulation of Investigatory Powers Act 2000.
- 1.12 This Enforcement Policy has also been prepared with regard to The Code for Crown Prosecutors which the Council adopts in making decisions to prosecute.

## SECTION 2 – AIMS OF THE ENFORCEMENT POLICY

- 2.1 This Enforcement Policy aims to promote a fair, effective and consistent approach to regulatory inspection and enforcement which improves outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code which came into force on 6 April 2008. The Council will endeavour to act in accordance with this guidance, the Enforcement Concordat, the Code for Crown Prosecutors, any future national guidance and standards and any supplementary local policies.
- 2.2 To achieve this, the Council will:
- seek to achieve compliance in a fair, consistent, proportional, transparent and targeted manner;
  - seek to assist businesses and others in meeting their legal obligations through education and advice, and aim to be clear, open and helpful in its approach to enforcement;
  - focus on prevention rather than cure;
  - seek to target enforcement resources at areas of highest risk, including non-compliant businesses and individuals;
  - take firm action against those who knowingly contravene the law or act irresponsibly;
  - where appropriate work jointly with other regulatory or enforcement agencies to solve problems;

## SECTION 3 – GUIDING PRINCIPLES OF ENFORCEMENT

- 3.1 The guiding principles that the Council will have regard to when undertaking its regulatory and enforcement role are:
- any decision regarding enforcement action will be impartial and objective, and will not be influenced by race, gender, politics, sexual orientation, disability or religious beliefs of any alleged offender, victim or witness. Such decisions will not be affected by improper or undue pressure from any source;
  - that the majority of individuals and businesses wish to comply with legal requirements, and should be assisted to do so;
  - to give positive feedback, wherever possible, to encourage and reinforce good practices;
  - in dealing with any enforcement situation, the Council's actions will be proportionate to the scale, seriousness and intention of any non-compliance;
  - there will be consistency of enforcement, whilst recognising that there are different, satisfactory solutions to each issue. The Council will refrain from being over-prescriptive whenever possible;
  - this Enforcement Policy envisages a process of escalation. Except in the most serious cases or where advice/warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before more formal action commences;
  - prosecution will normally only be considered where it is in the public interest to do so and where there have been serious breaches or where other enforcement measures have failed;
  - regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action (e.g. Human Rights Act, Code for Crown Prosecutors, Regulators Compliance Code);
  - regard shall be had to the Council's own policies in respect of Customer Care, Equal Opportunities, etc.
- 3.2 Enforcement will be carried out in a firm and fair way. There are four principles that support this:
1. **Proportionality:** this means relating enforcement activity to risk. When the law requires that risks should be controlled so far as is reasonably practicable the cost of the remedy as well as the degree of risk will be taken into account. In some cases there are specific requirements in the law to take account of the cost of the remedy.
  2. **Consistency:** this does not mean uniformity of approach but rather that a similar approach is taken in similar circumstances to achieve similar ends. Officers will take account of many variables including; the scale of impact,

the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgment. Arrangements to deliver consistency are in place including supervised quality monitoring visits, agreed protocols between the district councils throughout Devon and arrangements for auditing of activity by officers from other authorities in Devon.

- 3. Transparency:** this is important to maintain public confidence in the Council's ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from the Council. It also means making it clear why the Council intends to, or has taken, enforcement action. The Council will clearly distinguish between legal requirements and advice or guidance about what is desirable but not compulsory. A person having a legal duty will be advised of the rights of officers and the level of service that can be expected. All information and advice issued will be in plain language and the Council will provide information in a format that is available to the recipient.
- 4. Targeted:** this means making sure that inspections or actions are directed primarily to those activities which give rise to the most serious risks or where hazards are least well controlled. Routine inspections of businesses and houses in multiple occupation are prioritised according to an assessment of the risk they pose. The Council's policies provide a framework for assessing priority in non-planned areas of activity such as setting response times to complaints.

### 3.3 Offences by Juveniles/Young Persons

A juvenile is a person who has not attained the age of 17. The rebuttable presumption of criminal law that a child aged 10 or over was incapable of committing an offence has been abolished. A juvenile does have criminal responsibility and can be held accountable for their actions however, the Police and Criminal Evidence Act 1984 (PACE) has specific stipulations and requirements for the treatment and questioning of anyone who appears to be under the age of 17 (in the absence of evidence to the contrary).. The Council's officers will be familiar with these requirements and ensure that they act appropriately within the PACE stipulations.

If a young person appears to be under the age of 17 the Council's officer will seek to ascertain the young person's age. If the young person can produce satisfactory identification, (e.g. photo ID) which confirms they are not a juvenile then the officer may proceed with the questioning in accordance with PACE.

If a young person cannot provide evidence of age or the Council's officer still believes the young person to be a juvenile, then the officer will proceed in an appropriately cautious manner. The Council's officer should explain that in the absence of satisfactory evidence of age the young person will be treated as a juvenile and that the matter will be pursued via contact with the young person's parent, guardian or a similar person with parental responsibility.. The contact details for such a person will be requested and recorded by the Council's officer, along with the name address and date of birth of the young person.

While it is considered that young persons between the age of 10 and 14 can differentiate between right and wrong, the criminal law conclusively presumes that no child under the age of 10 years can be guilty of any offence



## SECTION 4 – METHODS OF ENFORCEMENT

- 4.1 The method of enforcement chosen will depend on the type and degree of risk to people or the environment, the past history of the alleged offender, the degree of confidence in the management of a business, the consequences of non-compliance and the likely effectiveness of the various enforcement options. In deciding on the appropriate enforcement option, advice contained in relevant codes of practice, guidance documents and council policies will be considered. The primary authority of a business based outside the City of Exeter will be consulted. In deciding whether to prosecute reference will be made to the Code for Crown Prosecutors.
- 4.2 **Advice and education** will be the first stage of enforcement in most cases. In order to encourage compliance the Council will ensure that people understand their legal duties and obligations using all methods at its disposal including:
- media campaigns - as used for dog fouling;
  - targeted newsletters - such as 'Landlords' News';
  - mail shots - used to give advice on specific issues to a targeted group;
  - training courses - such as those provided on food hygiene;
  - seminars on topical issues;
  - individual advice whilst carrying out inspections and as otherwise appropriate.
- 4.3 **Informal written notice of requirements** will be given for most minor contraventions of law identified at inspections. A written report of a visit will be provided following each programmed inspection. Advice and legal requirements will be clearly distinguished. Such requirements will always be followed up and failure to put matters right may result in formal action being taken.
- 4.4 **Statutory notice requiring that something be done or some activity cease. Examples include:**
- Notices must be served if the Council is aware of the existence of a statutory nuisance. There is no discretion available under the relevant part of the Environmental Protection Act 1990. However, the Clean Neighbourhood and Environment Act 2005 (CNEA) introduced a 7 day period for negotiation in respect of noise nuisance.
  - Most inspections of privately rented housing will result in work being required by statutory notice.
  - More serious food hygiene and health and safety at work contraventions will be dealt with by statutory notice. Emergency prohibition powers exist which allow a business to be shut down or an activity be stopped where serious risks exist. If a notice is to be served the recipient will, where possible, be told first. In most cases there is a formal appeal procedure. The recipient will always be given details of how to appeal when the notice is served.

- 4.5 **Fixed Penalty Notices (FPNs)** are available for specific offences relating to a number of “environmental crimes” such as dog fouling and littering. The power to issue FPNs for a number of offences was extended by the CNEA. Where there is a range of fines available, the Council will generally set the fine at the default level set by the government in the guidance. Such a notice will always be issued where a relevant offence is witnessed by a Council officer. Payment of an FPN denotes acceptance and discharge of any criminal liability for the alleged offence. There is no formal appeal against the issue of an FPN. Where criminal liability for the alleged offence is disputed on bases of either fact or law the FPN will be withdrawn and the matter referred for prosecution. In most cases, the appropriate venue for the trial of issues of law and fact arising from this sort of action will be the Magistrates’ Court within prosecution proceedings. Failure to pay the penalty will also result in prosecution for the substantive alleged offence. If an alleged offender has received two fixed penalty notices for previous offences that have been accepted and paid, the alleged offender will not be given the option of discharging their liability for a third offence by payment of a fixed penalty notice.
- 4.6 **Refusal, Suspension and Revocation of a Licence or Registration** where an activity or business is required to be licensed by the Council.
- 4.7 **A Formal Caution** is an alternative to prosecution. It can only be given if the offender agrees to being cautioned and admits the offence. The Formal Caution is recorded and can be cited in any subsequent legal proceedings for the following five years after the date of the Formal Caution. The decision to issue a Formal Caution will be taken by the Assistant Director Environment in consultation with the Corporate Team Manager Legal Services. The Assistant Director Environment will administer the Formal Caution.
- 4.8 The Formal Caution is an additional procedure for dealing with certain offenders in exceptional circumstances where a prosecution might otherwise be taken. In particular, it will not be used as a “let off” where there is doubt about the ‘public interest’. Formal Cautions are not appropriate for the more serious offences/offenders. Formal Cautions may be considered in a case which ordinarily would meet the public interest test but where there are specific, personal and very exceptional circumstances that weigh firmly against it, for example, where a court appearance would be likely to have a seriously adverse effect on the complainant’s health, the accused is elderly or was suffering from significant physical or mental ill health at the time of the offence.
- 4.9 A Formal Caution may only be used where a prosecution could be properly brought. It is therefore important that, before even considering if a Formal Caution might be appropriate, the Council follows its procedures for considering a prosecution. Evidence should be obtained and a prosecution report prepared in the usual way, with full evaluation of the evidence and possible charges. The evidential and public interest tests set out in the Code for Crown Prosecutors should be satisfied.
- 4.10 If the accused refuses to accept a Formal Caution prosecution should normally follow immediately.
- 4.11 A Formal Caution should not generally be considered where the accused has already accepted a caution for the same or similar offences. Formal Cautions

should not be administered where there can be no reasonable expectation that this will curb offending. More than one Formal Caution should be considered only where there has been a sufficient lapse of time since the first caution to suggest that it had some effect.

- 4.12 It is important to make clear to the accused that if a Formal Caution is accepted then it will be considered, and may influence the decision to prosecute, should they subsequently re-offend. If the subsequent offence is the same as that for which the Formal Caution was administered then prosecution will follow. In relation to different offences the Formal Caution may be considered an aggravating factor.
- 4.13 Details of the Formal Caution may also be made publicly available. The Council will not normally cite a Formal Caution in court, nor make information about it publicly available, in relation to an offence committed more than 5 years after the offence for which it was issued.
- 4.14 It will be generally preferable to administer a caution to an individual in person to avoid issues over identity and proof of acceptance. The accused should be invited to have a legal adviser present whilst the caution is offered. The Assistant Director Environment should satisfy himself that the accused understands the nature of the Formal Caution, the consequences of acceptance and agrees to the procedure and admission of the offence(s). The accused should be invited to sign two copies of the Formal Caution and retain one of them.
- 4.15 Where a Formal Caution is signed on behalf of a company the Formal Caution may be administered by post. The Council will take steps to ensure that the Formal Caution is accepted on the company's behalf by an appropriately senior officer of the company who is duly authorised to act by the company's board of directors. The Formal Caution should be taken or posted to the Company's registered office.

4.16 **Prosecution**

The commencement of prosecution proceedings is a serious step that will only be taken after full consideration of the implications and consequences. However, in certain circumstances prosecution may be appropriate without prior warning or recourse to the alternative methods of enforcement outlined above.

## SECTION 5 – PROSECUTION POLICY

- 5.1 A decision to prosecute is a serious matter and will only be taken after full consideration of the implications and consequences.
- 5.2 The decision will have regard to the evidential and public interest tests set down in the Code for Crown Prosecutors. Regard will also be had to any statutory guidance or codes of practice issued by relevant agencies, government or otherwise.
- 5.3 A prosecution will not be commenced or continued unless the Council is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction. Where a case does not pass the evidential test it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued unless it is in the public interest to do so. Public interest factors that can effect a decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.
- 5.4 The following public interest factors will be taken into account when deciding whether or not to prosecute:
- (a) effect of the offence or action
  - (b) foreseeability of the offence or the circumstances leading to it
  - (c) intent of the offender, individually and/or corporately
  - (d) history of offending
  - (e) attitude of the offender
  - (f) deterrent effect of a prosecution, on the offender and others
  - (g) personal circumstances of the offender

These factors are not exhaustive and those which apply will depend on the particular circumstances.

- 5.4 The Council will prosecute those persons responsible for the offence Where the offence has resulted from a company's activities the Council will prosecute the company but will also consider any part played by company officers. The Council may take action against those officers as well as the company where it can be shown that the offence was attributable to their consent or neglect.
- 5.5 Where there is sufficient evidence and any of the following additional factors are present, the Council will generally decide to prosecute:
- incidents which have significant consequences for individuals, the environment or a section of the community
  - failure to comply with fixed penalty payment requirements
  - carrying out operations without a relevant licence
  - persistent breaches of regulatory requirements
  - failure to comply or to comply adequately with formal remedial requirements

- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information
- deliberate obstruction of officers in the course of their duty

## SECTION 6 – APPEALS, COMPLAINTS AND CASE REVIEW

### 6.1 Appeals

- 6.1.1 Appeals against statutory notices and decisions with a right of appeal to the magistrates' court should be addressed to The Clerk to the Justices at the North and East Devon Magistrates' Court Office, Southernhay Gardens Exeter EX1 1HU. Telephone 01392 415300. Appeals against statutory notices and decisions with a right of appeal to the Crown Court should be addressed to The Court Manager, The Exeter Crown Court, The Combined Court Centre, Southernhay Gardens, Exeter EX1 1HU. Strict time limits apply for appeals and the appellant should be notified of the relevant limit in any determination notice issued by the Council.
- 6.1.2 In respect of an Improvement Notice or a Prohibition Notice served under the Health and Safety at Work etc Act 1974 the right of appeal is to the Employment Tribunal Office at 2nd Floor, Keble House, Southernhay Gardens, Exeter EX1 1NT Telephone 01392 279665. The Council will provide details and an appeal form with any improvement or prohibition notice served.
- 6.1.3 Matters relating to enforcement action relating to housing should be made to the Residential Property Tribunal Service.
- 6.1.4 Matters relating to the Environmental Permitting Regulations, appeals must be made to the Planning Inspectorate.

### 6.2 Complaints

- 6.2.1 If an individual, business or other organisation is unhappy with the action being taken, they should, in the first instance, discuss their concerns with the appropriate officer at the Council.
- 6.2.2 If they remain unhappy with the way in which the matter is being processed the Council's Complaints Procedure should be followed.
- 6.2.3 Where the Council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint that complaint will not be dealt with by the Council's Complaints Procedure.

### 6.3 Case Review

- 6.3.1 Each case will be kept under review to ensure that the appropriate level of enforcement action is taken.
- 6.3.2 Written records will be kept which explain why a particular course of action has been taken. These records will refer, as necessary, to this policy. The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure as far as is reasonably practicable, uniformity and consistency.

## SECTION 7 – AUTHORITY TO ENFORCE

- 7.1 Members have decided in general policy terms what attitude should be taken to offences and contraventions of legal requirements. Members will not be involved in detailed consideration of individual cases (other than in very exceptional circumstances).
- 7.2 The Council will ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified and have relevant and adequate experience in the area of enforcement, and adhere to respective codes of practice.
- 7.3 The Assistant Director Environment has delegated powers to authorise officers, take appropriate action and to prosecute, subject, in some cases, to consult with the Corporate Manager Legal. The details are set out in the Council's Scheme of Delegations.
- 7.4 The decision to serve notice, prosecute or to refuse, suspend or revoke a licence or permit is based on the available evidence and professional judgement of the Assistant Director Environment. The relevant portfolio holder and or committee will be consulted when required.

## **SECTION 8 – LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES**

- 8.1 If a business has a Primary, Lead or Home Authority, the Council will contact that authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.
- 8.2 If a Primary Authority determines that the proposed enforcement action is inconsistent with advice or guidance previously given by the Primary Authority, it may direct the Council not to take that action.
- 8.3 Where an enforcement matter affects a wide geographical area beyond the City boundaries, or involves enforcement by one or more other local authorities or partner regulators; where appropriate all relevant partner regulators will be informed to ensure that any proceedings instituted are for the most appropriate offence.



## SECTION 9 – PUBLICITY

- 9.1 As a regulatory authority, the Council has a responsibility to protect the public from detrimental trading and environmental practice and undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter the commission of offences.
- 9.2 One such measure is the publication of convictions and information concerning significant detrimental trading or other behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that the Council take a serious view of such detrimental behaviour.
- 9.3 The Assistant Director Environment will therefore consider publishing the name and address of each person convicted of, or subject to, other enforcement action, together with details of the issues involved. To reach a decision as to whether to publish such information, the Assistant Director Environment will consider the following factors:
- the specific details of the offence committed or detrimental activity.
  - the public interest in disclosing personal information e.g. the deterrent effect of the publication.
  - whether the publication would be proportionate.
  - the personal circumstances of the offender.
- 9.4 This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

## SECTION 10 – CONTACTING THE OFFICE OF THE ASSISTANT DIRECTOR ENVIRONMENT

This policy document is available on request at the Civic Centre and on the City Council web site. A summary leaflet on the enforcement of food safety and health and safety legislation is provided during routine inspections.

### Office of the Assistant Director Environment

Exeter City Council  
Civic Centre  
Paris Street  
Exeter  
EX1 1RQ

Telephone: 01392 265193

Email: [environmental.health@exeter.gov.uk](mailto:environmental.health@exeter.gov.uk)

Website: [www.exeter.gov.uk](http://www.exeter.gov.uk)

We will make this policy available on tape, in Braille, large type, or in another language on request.

The policy will be reviewed annually.

### If English is not your first language and you need help, we may be able to help you. Please contact us.

إذا لم تكن الانجليزية لغتك الام واحتجت الى بعض المساعدة في ملء النموذج فقد يكون بمقدورنا مساعدتك. يرجى الاتصال بـ ....

যদি ইংরেজী আপনার প্রথম ভাষা না হয় এবং ফর্ম ভরতে আপনার সাহায্যের প্রয়োজন হয়, আমরা আপনাকে সাহায্য করতে পারি। অনুগ্রহ করে যোগাযোগ করুন...

如果您的母語不是英語並且在填表時遇到任何困難，或許我們會對您有所幫助。請和我們聯繫....

જો અંગ્રેજી તમારી પહેલી (માતૃ) ભાષા નહીં હોય અને આ ફોર્મ ભરવામાં તમને સહાય જોઈતી હોય તો, અમે તમારી મદદ કરી શકીએ છીએ. કૃપા કરી સંપર્ક કરો ....

ਜੇਕਰ ਇੰਗਲਿਸ਼ ਤੁਹਾਡੀ ਪਹਿਲੀ ਭਾਸ਼ਾ ਨਹੀਂ ਹੈ ਅਤੇ ਤੁਹਾਨੂੰ ਫਾਰਮ ਭਰਨ ਲਈ ਸਹਾਇਤਾ ਚਾਹੀਦੀ ਹੈ, ਤਾਂ ਮੁਮਕਿਨ ਹੈ ਕਿ ਅਸੀਂ ਤੁਹਾਡੀ ਸਹਾਇਤਾ ਕਰ ਸਕੀਏ। ਕਿ੍ਪਾ ਕਰਕੇ ਸੰਪਰਕ ਕਰੋ ....

Haddii Ingiriisigu aanu ahayn afkaaga koobaad una baahan tahay in lagaa gargaaro buuxinta warqada, waxa dhici karta inanu ku caawino. Fadlan la xidhiidh...

اگر انگلیش آپ کی مادری زبان نہیں ہے اور آپ کو اس فارم کو پُر کرنے میں مدد کی ضرورت ہے تو ہم آپ کی مدد کر سکتے ہیں۔  
براہ مہربانی رابطہ قائم کریں: .....

Nếu Anh ngữ không phải là ngôn ngữ chính của quý vị và quý vị cần được trợ giúp để điền mẫu đơn này, chúng tôi có thể giúp đỡ. Vui lòng liên lạc với ...

## APPENDIX A – FOOD SAFETY

### **A.1 Guidance**

To be read in conjunction with:  
Food Law Code of Practice (England)  
Food Law Practice Guidance (England)

### **A.2 Statement of Objectives**

- A.2.1 It is this Council's policy to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within this City is without risk to the health or safety of the consumer.
- A.2.2 Enforcement action, be it verbal warnings, the issue of written warnings or statutory notices, or prosecution, is primarily based upon an assessment of risk to public health. In the context of this policy, this risk is the probability of harm to health occurring due to non-compliance with food safety law. Enforcement action will not normally, therefore, constitute a punitive response to minor technical contraventions of legislation.
- A.2.3 We support specific guidance on enforcement action contained in the Food Law Code of Practice and associated Practice Guidance.
- A.2.4 All authorised officers when making enforcement decisions will abide by the policy. Any departure from the policy will be exceptional, capable of justification and be considered by management before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.
- A.2.5 The Council recognises and affirms the importance of achieving and maintaining consistency in our approach to making all decisions, which concern food safety enforcement action, including prosecution. To achieve and maintain consistency, the guidance in the Food Law Code of Practice (England), Food Standards Agency and Local Government Regulation advice is always considered and followed where appropriate.

### **A.3 Food Related Statutory Notices**

#### **Hygiene Improvement Notices**

- A.3.1 Where we believe that an informal approach will not be successful and/or where the business has failed to respond to an informal approach, formal action will be considered.
- A.3.2 Consideration will be given to the issue of hygiene improvement notices where one or more of the criteria below apply:
- there are significant contraventions of legislation;

- there is a lack of confidence in the food business operator or enterprise to respond to an informal approach;
- there is a history of poor 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.

A.3.3 The use of hygiene improvement notices will, in general, be related to risk to health.

A.3.4 Hygiene improvement notices may only be issued by officers who have been authorised by the Council to do so.

A.3.5 Hygiene improvement notices will not be signed by authorised officers on behalf of non-authorised technical officers unless the authorised officer has examined the evidence for any contravention and is satisfied that a contravention has been committed, is satisfied that it is significant and that any other appropriate criteria are satisfied.

A.3.6 We will ensure that authorised officers follow all relevant guidance in the Food Law Code of Practice (England) and Food Law Practice Guidance (England) and Local Government Regulation guidance on the use of statutory notices. Authorised officers will place realistic time limits on notices (preferably agreed with the food business operator as attainable and appropriate), discuss with the Food Business Operator the works that will be specified and why they are necessary and fully consider the availability of solutions.

We will endeavour to maintain good working relationships and will liaise while work is being undertaken.

A.3.7 Failure to comply with a hygiene improvement notice will in general result in Court proceedings.

A.3.8 Other bodies may be advised of formal action taken by the Council and its outcome. These bodies may include home/primary and originating authorities.

### **Hygiene Emergency Prohibition Notices**

A.3.9 The use of an (HEPN) when an imminent risk of injury to health has been identified will be considered in one or more of the following circumstances:

- the consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- where a real risk of food contamination exists;
- an imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner. This may be where practices which are serious contraventions have been, or are involved with an outbreak of food poisoning;

- the guidance criteria, specified in the Food Law Code of Practice (England) and Food Law Practice Guidance (England) concerning the conditions when prohibition may be appropriate, are fulfilled;
- there is no confidence in the integrity of an unprompted offer made by a food business operator to voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk;
- a food business operator is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

A.3.10 Officers to be authorised to issue HEPNs will be competent, fulfil the qualification requirements referred to in the Food Law Code of Practice (England) and Food Law Practice Guidance (England), and also have experience in a variety of food safety enforcement situations.

A.3.11 Where emergency prohibition action involving chemical contamination is being considered, medical or other expert advice may be sought before a final enforcement decision is taken.

A.3.12 Once an HEPN has been issued, an application for a hygiene emergency prohibition order will be made to the Magistrates' Court within three days.

A.3.13 Other bodies may be advised of formal action taken by the Council and its outcome. These bodies may include home and originating authorities. Reference will be made to any detailed advice offered by Local Government Regulation, particularly guidance issued on the Home Authority Principle.

#### **A.4 Specific Guidance on the Enforcement of Article 5 EC Regulation 852/2004**

A.4.1 The council has a policy on judging and securing compliance with Article 5 of EC 852/2004 (the requirement for food business operators to put in place, implement and maintain a permanent procedure based on the principles of hazard analysis and critical control points (HACCP)).

A.4.2 After establishing the scope and activities of a business, inspecting officers will focus on whether safety procedures at critical steps have been implemented and associated monitoring is occurring.

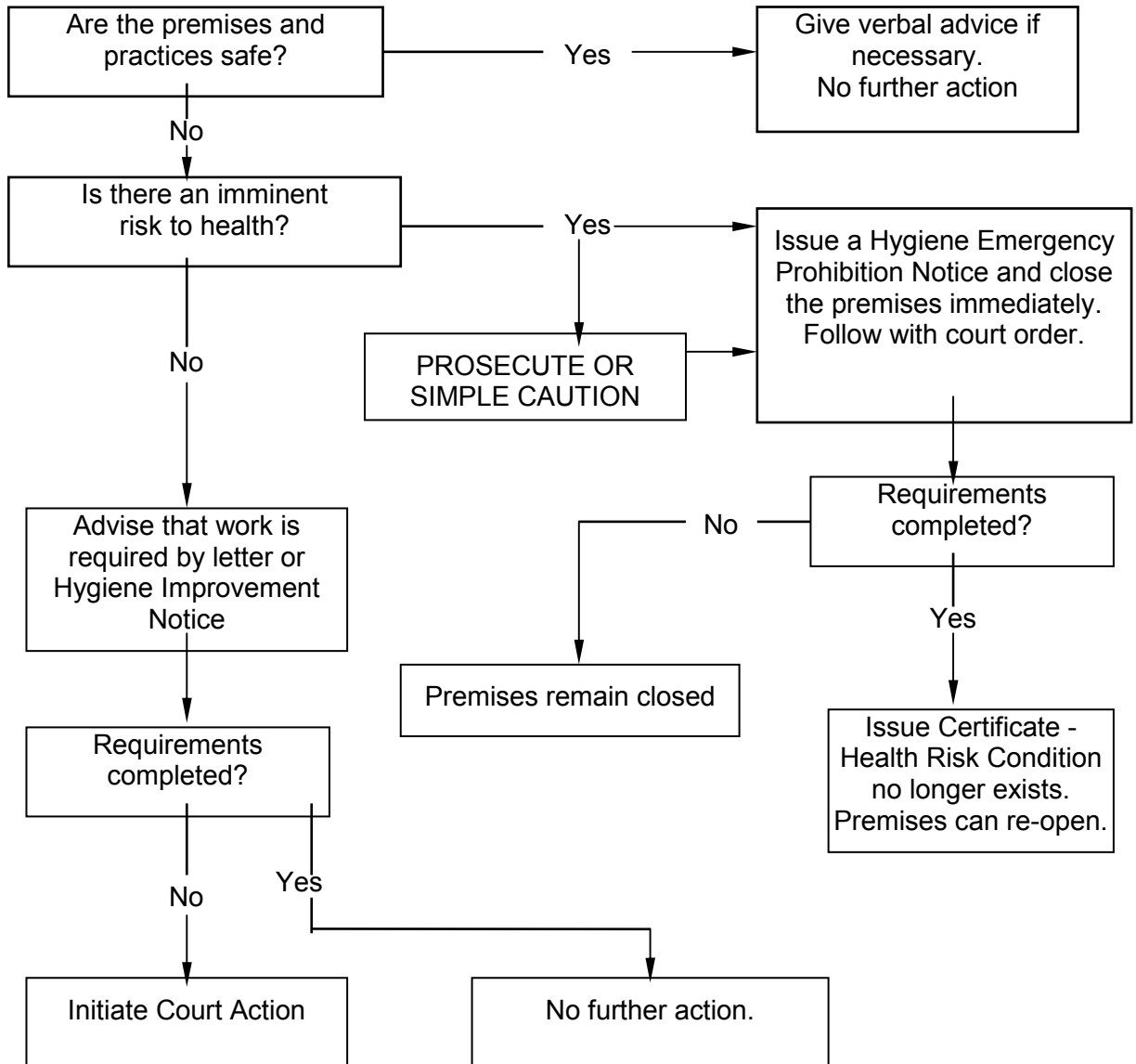
A.4.3 Small, low risk businesses (e.g. confectioners and grocers) would not be expected to have formal procedures or records.

A.4.4 Formal enforcement will be appropriate in circumstances where the business consistently fails to respond to the council's informal attempts to secure compliance and / or where there are risks to food safety.

A.4.5 Officers will use their judgement to determine the most appropriate option to secure compliance (e.g. Hygiene Improvement Notice / Prosecution).

## A.5 Food Safety Enforcement Policy - Summary

The type of enforcement will depend on the conditions found following a Food Hygiene Inspection. The diagram below shows an outline of the enforcement procedure.



## APPENDIX B: HEALTH AND SAFETY

### B.1 Introduction

- B.1.1 The Health and Safety Enforcement Policy is based upon the model developed by the Health and Safety Executive in association with Local Government Regulation. As a regulator, the Council's primary purpose is to assist businesses in preventing work-related accidents and ill-health. This is generally achieved through a range of interventions, including the inspection of high-risk businesses and a number of proactive measures including stakeholder engagement and the provision of information and advice.
- B.1.2 Investigating complaints, accidents and ill-health is important in improving standards and ensuring compliance; it also provides the basis for enforcement action where necessary. Enforcement has three main objectives:
- to compel responsible parties to take immediate action to reduce risk;
  - to engender compliance with the law;
  - to ensure those who breach health and safety requirements or fail in their responsibilities are held to account for their actions.
- B.1.3 The Council believes in firm but fair enforcement of health and safety law in line with Health and Safety Executive's (HSE's) Enforcement Policy Statement. This is informed by the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole.
- B.1.4 The Health and Safety Executive's national priorities, and those determined at local level, are used to target our activities and resources via our Statutory Business Compliance Service Plan. To maintain a proportionate response, most resources available for investigation will be devoted to the more serious circumstances.
- B.1.5 Our health and safety team will aim to:
- inspect those high-risk businesses for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Council's selection criteria policy;
  - rate premises according to risk (which includes confidence in management, health and safety performance) in order to determine the future of future inspections;
  - seek to promote health and safety through advice and guidance, and by the provision of training; and
  - take formal enforcement action, in accordance with the Enforcement Policy Statement, when it is the most appropriate way of dealing with the matter.

## **B.2 The Enforcement Management Module**

- B.2.1 The Health and Safety Executive have developed an Enforcement Management Module (EMM) which provides the Council with a framework for making enforcement decisions that meet the principles in the Enforcement Policy Statement. It captures the issues inspectors consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.
- B.2.2 The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:
- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
  - promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
  - be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
  - help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.
- B.2.3 The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met.
- B.2.4 The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

## **B.3 Health and Safety Statutory Notices**

- B.3.1 The council has a procedure for the service of improvement and prohibition notices under the Health and Safety at Work etc. Act 1974.
- B.3.2 The Enforcement Management Module provides a framework to help officers decide whether a notice is a proportionate and effective response.
- B.3.3 **Improvement Notices** – may be served on persons contravening one or more relevant statutory provisions, and requiring that person(s) to remedy the contravention, or matter(s) occasioning it, within a period of time not less than 21 days.
- B.3.4 **Prohibition Notices** – may be served on persons where the activity carried on involves a risk of serious personal injury.
- B.3.5 Improvement and Prohibition Notices may only be issued by officers who have been authorised by the council to do so.
- B.3.6 Only an officer who has witnessed the contravention can issue the notice.



B.3.7 Notices may be appealed within 21 days through an Employment Tribunal (see section 6). The entering of an appeal will suspend an improvement notice until the appeal is determined but a prohibition notice will continue in force until a tribunal directs otherwise.

#### **B4 Death at Work**

B.4.1 Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate.

B.4.2 To ensure decisions on investigation and prosecution are co-ordinated, the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published '*Work Related Deaths: A Protocol for Liaison*'. Exeter City Council has agreed that it should take account of the Protocol when responding to work-related deaths.

#### **B.5 Accident Investigation**

B.5.1 It is the policy of the Council to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 1995 according to the criteria set out below.

B.5.2 An initial assessment of the incident will be made and a decision taken on investigation within 3 working days.

B.5.3 Accidents will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

B.5.4 The purpose of investigation is to:

- identify immediate and underlying causes;
- ensure the duty holder takes appropriate remedial action to prevent reoccurrence;
- evaluate compliance with the relevant statutory provisions; and
- apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

B.5.5 Investigations will be:

- continued only so far as they are proportionate to the achievement of the objectives set for them;
- conducted and/or supervised by staff who are competent;
- provided with adequate resources and support, including information, equipment and staffing;
- conducted so that efficient and effective use is made of the resources committed to them;
- timely, so far as this is within the control of the investigating inspector; and
- subject to suitable management procedures for monitoring the conduct and outcome of investigations.

B.5.6 Factors to determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries;
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result in a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally;
- the extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation;
- the extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s); and
- the prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

**B.6 Criteria for Investigating RIDDOR Reports**

**Mandatory Investigations**

B.6.1 All fatalities arising out of, or in connection with work activities whether it is to an employee or a member of the public. This excludes suicides or deaths from natural causes.

B.6.2 The following major injuries, as defined in the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations (RIDDOR), to all persons, including non-employees, irrespective of the cause:

- all amputations of digit(s) past the first joint;
- amputation of hand/arm or foot/leg;
- serious multiple fractures;
- crush injuries leading to major organ damage;
- serious head injuries involving loss of consciousness;
- burns or scalds greater than 10% of the body;
- permanent blinding of one or both eyes;
- any degree of scalping;
- asphyxiations.

B.6.3 All reported cases of disease which meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which have already been investigated.

**Non Investigation of a Mandatory Incident**

B.6.4 Grounds for not investigating incidents that would normally be investigated include:

- impracticability of investigation e.g. the unavailability of witnesses or evidence;

- no reasonably practicable precautions available to prevent the incident or its recurrence;
- investigating the accident would mean that the Council was acting ultra vires;
- conflict of interest between the Council as regulator and duty holder, in which case the appropriate enforcing authority will be notified;
- inadequate resources due to other priorities (must be referred to Environmental Health Manager or equivalent.)

### **Discretionary Investigations**

B.6.5 Those incidents not falling into the above criteria for mandatory investigation may be investigated at the Council's discretion, taking into account the following factors:

- any incident which relates to the HSE's current strategic priorities which has not caused a RIDDOR defined major injury or one which arises from a specific health and safety initiative that may be contained within the Council's Health and Safety Service Plan;
- the poor track record of the duty holder and whether there is a history of similar events;
- the incident has the potential for high public profile/media attention or has received considerable media attention leading to reputational risk through inaction/perceived inaction;
- the incident may give rise to complaints. Depending on circumstances, this should be dealt with as a normal complaints procedure and not necessarily require a full investigation;
- any incident identified as being useful for enhancing sector good practice/technical knowledge.

## APPENDIX C: LICENSING

### **C.1 Scope and Explanation of the Policy**

C.1.1 The Office of the Assistant Director Environment undertakes licensing work in the following areas:

<b>Alcohol, Regulated Entertainment and Late Night Refreshment</b>	Sale and supply of all alcohol, whether for consumption on or off the premises. Regulated entertainment including recorded and live performances of music, singing and dancing, indoor sporting events, films, plays; and late night refreshment after 23:00 hours.
<b>Animal Health and Welfare</b>	Animal Boarding Establishments, Dangerous Wild Animals, Dog Breeding Establishments, Pet Shops, Riding Establishments, Game Dealers.
<b>Charitable Collections</b>	House to House and Street Collections.
<b>Gaming and Gambling</b>	Amusement Arcades, Small Lotteries, Amusement with Prize Machines, Track Betting.
<b>Hackney Carriage and Private Hire Vehicles</b>	Hackney Carriage and Private Hire vehicles, drivers, proprietors and operators.
<b>Miscellaneous</b>	Sex Establishments, Scrap Metal Dealers, Street Trading.

C.1.2 Whenever possible, the Council will work in partnership with the Responsible Authorities to achieve common goals on matters of mutual concern.

C.1.3 Under the Licensing Act 2003 the Responsible Authorities who are consulted in relation to applications made to the Council are:

- Devon and Cornwall Police
- Other areas within the Office of the Assistant Director Environment (Environmental Protection, Food and Health and Safety)
- The Planning Authority
- Devon and Somerset Fire and Rescue Service
- Social and Health Care
- Trading Standards

### **C.2 Statement of Licensing Objectives**

C.1.1 The Licensing Team is committed to efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

C.1.2 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C.1.3 The Licensing Team pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the better regulation agenda;
- Keeping the city safe and a regional capital of leisure and cultural facilities
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
- Responding proportionately to regulatory breaches; and
- Protecting and improving Exeter's environment and neighbourhoods

## **C.2 Enforcement Options**

C.2.1 The Licensing Team recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by government departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

C.2.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individuals, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- change the behaviour of the offender;
- eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- proportionate to the nature of the offence and the harm caused;
- aim to deter future non-compliance.

C.2.3 Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;
- consequences of non compliance;
- likely effectiveness of the various enforcement options.

C.2.4 Having considered all the relevant options the choices for action are:

- informal warning: All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender:

- licence review: a premises licence can be reviewed where issues arise from one or more of the licensing objectives.
- Hackney carriage or private hire vehicle licence: licence suspension or revocation will be used to protect public safety where a driver is found to be not fit and proper. Other sanctions such as DSA testing will be used to protect public safety and in accordance with the taxi licensing policy.
- Formal caution: the administration of a Formal Caution by the Assistant Director Environment may be undertaken as an alternative to prosecution in accordance with the Council's policy set out above.
- Prosecution: a prosecution is appropriate where there is sufficient evidence and there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected. The decision to prosecute will be taken in accordance with the Council's policy set out above.

### **C.3 Hearings and Review**

C.3.1 In some circumstances where licence holders have:

- been convicted of a relevant offence;
- refused to comply with a condition of the licence;
- behaved in a way which may render that person as unsuitable to hold a licence; or
- behaved in a way which is likely to have put the public at risk
- circumstances that appear to breach the Licensing Objectives of the Licensing Act 2003

they will be reported to a Committee of the Council or a Licensing Panel to review the licence. The committee/panel may feel that the immediate revocation, suspension or variation of a licence may be the most appropriate course of action.

C.3.2 Where licence holders are reported to a Committee for consideration of formal action we will:

- give sufficient notice of the date the matter is to be considered;
- give notice to the licence holder of the charges against them;
- give notice to the Relevant Authorities and Interested Parties;
- provide the opportunity for the licence holder to be represented;
- provide the licence holder with the opportunity to present their case and provide supporting evidence;
- ensure the matter is determined in an impartial manner in accordance with the rules of natural justice;
- provide written notice of the decision with reasons

## APPENDIX D: ENVIRONMENTAL PERMITTING

### D.1 **Background**

D.1.1 The Pollution Prevention and Control (PPC) Act 1999 enacts proposals for enhanced industrial pollution control that were set out in the EU Integrated Pollution and Prevention and Control Directive (96/61/EC) the IPPC Directive.

D.1.2 The Act establishes two separate pollution control regimes: the IPPC (A1 installations permitted by the Environment Agency) and the LA-IPPC/LAPPC systems (A2 Installations and Part B Installations permitted by the local authority).

D.1.3 The main features of the LA-IPPC and LAPPC systems are as follows:

- (a) Prescribed processes designated for local control must not be operated without a permit from the local authority in whose area they are located. Mobile plant must be permitted by the local authority in whose area the operator has his principal place of business.
- (b) Operators of prescribed processes must submit a detailed application for a permit to the local authority.
- (c) Local authorities are statutorily obliged to include conditions in any permit they issue which are based on the use of "Best Available Techniques" (BAT), which balances the costs to the operator against the benefits to the environment.
- (d) Secretary of State's Process Guidance Notes (for LAPPC) and Sector Guidance Notes (for LA-IPPC) have been issued to every local authority on all the main categories of process coming under local authority control. These notes contain the Secretary of State's views on the techniques appropriate in order to achieve the BAT. They are likely to be of interest to operators of prescribed processes as well as to local authorities.
- (e) Operators can appeal against refusal of an application, against the conditions included in a permit, and against the various forms of notice that may be served by a local authority. Appeals will not put notices into abeyance, except in the case of revocation notices.
- (f) Local authorities can issue enforcement, variation, suspension and revocation notices to ensure that appropriate standards of control are met and raised in line with new techniques and new awareness of environmental risk. Suspension notices are a mechanism for stopping a process if there is an imminent risk of serious pollution of the environment.
- (g) All applications for permits (except in relation to petrol vapour recovery, small waste oil burners, dry cleaners and mobile plant) must be advertised locally and details (except information that is commercially confidential or that which would prejudice national security) must be



made available so that the public can comment before the process is permitted or undergoes substantial change.

- (h) A public register must be set up by each local authority giving details of all integrated pollution control and local authority air pollution control processes in its area. It must include specified particulars of applications, permits, notices, directions issued by the Secretary of State, appeals decisions, monitoring data, etc. Information is to be excluded from the register only on the grounds of national security or commercial confidentiality. This register is kept and maintained by the Administration Section and can be viewed by the public during normal office hours.
- (i) Local authorities are obliged to levy charges in accordance with a scheme prescribed by the Secretary of State.
- (j) Authorised Officers have powers of entry, inspection, sampling, investigation, and seizure of articles or substances which are a cause of imminent danger or serious harm. (See below)

D1.5 The processes for control are specified in the **Pollution Prevention and Control (England and Wales) Regulations 2000** as amended. In order to assist local authorities with their duties under the act a series of general and additional guidance notes have been issued.

## **D.2 Enforcement Options**

D.2.1 There are essentially three stages of enforcement relevant to the unique, and often complex legal requirement of the LA-IPPC/LAPPC regime. These stages provide a framework in which action is determined.

D.2.2 The framework is relevant in respect of an application for initial permitting, an upgrade, or compliance with conditions. The stages are described as promotion, prevention and prosecution.

### **Stage 1 - Promotion**

D.2.3 In this stage the Council will seek to raise awareness about the need to comply with the LA-IPPC/LAPPC regime and generally promote environmental good practice. The objective of this stage is to achieve a climate of environmental awareness and co-operation from operators.

### **Stage 2 - Prevention**

D.2.4 In this stage, the Council will try to ensure that business does not unnecessarily expose itself to the possibility of formal action through the lack of information or understanding. One of the objectives of the permitting process is to provide operators with a clear understanding of what is required of them. Business should not waste resources making unnecessary or inappropriate applications so the Council will use pre-application discussions as a useful preventative tool.

D.2.5 The essence of this stage is the targeting of advice and information to ensure that requirements and procedures are fully understood. The Council will do what it can to warn businesses of imminent breaches of requirements and their implications. Enforcement action will not come as a surprise to

operators. The objective of this stage is to ensure a positive relationship between enforcer and those being enforced.

### **Stage 3 - Prosecution and formal Notices**

D.2.6 This stage refers to the use, when appropriate, of more formal mechanisms to achieve compliance, including enforcement, suspension and revocation notices. Although primary responsibility for compliance rests with industry, the ultimate sanction of prosecution will normally only be considered if the Council is satisfied that it has done all they reasonably can in stages 1 and 2 to achieve compliance or where:

- there is a risk of serious pollution of the environment or harm to health;
- there is a blatant disregard of responsibilities under the PPC legislation;
- the offence is of such gravity that other forms of action are inappropriate.

D.2.7 In exercising necessary discretion and in making decisions about the use of formal or informal action the Council will seek to act in a way consistent with other Local Authorities. This will allow industry to operate in a consistent climate.

### **D.3 Compliance with Conditions of Permits**

D.3.1 Guidance on basic principles concerning the frequency of inspecting LA-PPC/LAPPC processes has been issued by the DEFRA. Inspections can be divided into two main types:

- A. inspection to check compliance with conditions and in response to complaints;
- B. inspection associated with consideration of applications for a permit, proposals for process changes, requests for advice, etc.

D.3.2 Type A inspections will tend to be either announced or unannounced: a thorough check of the process will be pre-arranged whereas an unannounced inspection will be to audit a particular aspect of compliance. Type B inspections will tend to be pre-arranged.

D.3.3 DEFRA would normally expect all authorised processes (apart from small waste oil burners, dry cleaners and petrol stations) to be subject to a type A inspection at least once a year. The frequency of these visits should depend on the risk rating of the process, using Secretary of State's risk assessment methodology for LA-PPC or LA-IPPC and is specified in guidance note AQ2(03). According to this method, a process given a 'high' risk rating should receive two "full" inspections a year, during which the local authority officer must examine full compliance with all authorisation conditions and look at any process or other relevant (e.g. management) changes. In addition, there must be at least one "check" inspection to follow up any areas of concern or other matters arising from the full inspection. "Extra" inspections may be needed in response to complaints, adverse monitoring results etc. A 'medium' risk process should receive one "full" inspection, plus one

"check" inspection, together with "extra" inspections as required. A 'Low' risk process will receive one "full" inspection, together with "extra" inspections as required.

- D.3.4 In Exeter, all processes (including waste oil burners, dry cleaners and petrol stations) receive at least two 'full' inspections per year, regardless of their risk rating. This increased frequency enables officers to build good working relations with the operators and ensures that responsibilities required by the Regulations are not forgotten or neglected.
- D.3.5 In keeping with the prevention stage outlined above the Council will normally do what it can to ensure compliance by informal means. There may be circumstances, however, in which the Council moves directly to formal notices or prosecution.
- D.3.6 In the event of non-compliance with permit conditions or a variation notice the Council will normally issue a warning letter which will indicate the nature of the contravention and the steps which are needed to rectify it. Where possible, any works required should be agreed, along with a timescale for their completion.
- D.3.7 Where informal action of this kind is not met with an appropriate response, or where work does not progress satisfactorily within an agreed timescale, the Council will consider the enforcement notice procedures contained in Regulation 24 of the PPC Regulations. Where a specific condition has been contravened the Council may consider that, as a precursor to prosecution, an enforcement notice, which is subject to appeal, offers no further advantage.
- D.3.8 Where the Council is satisfied that there is an imminent risk of serious pollution of the environment, the Council must serve a suspension notice in accordance with Regulation 25 of the PPC Regulations. Such a notice would normally be accompanied by a site visit by a Council Officer to discuss in person with the operator the requirements of the notice.

## APPENDIX E: PRIVATE SECTOR HOUSING

### E.1 Introduction

- E.1.1 The Private Sector Housing Team (the Service) will only intervene when there is a significant risk to the health and safety of occupants, neighbours or visitors to a property. The supply of good quality, affordable privately rented accommodation is essential to meet local housing need and is closely linked to Exeter's vibrancy and economic progress.
- E.1.2 Private sector landlords in the city range from those with large portfolios to those with one or two properties. The Service aims to provide clear advice, guidance and information on meeting minimum standards and to give all landlords a reasonable opportunity to put problems right before taking formal enforcement action. Fair and consistent regulation benefits service users, local businesses, landlords, agents and property owners, by helping to maintain a "level playing field". In accordance with the Regulators' Compliance Code, the Service will consider the impact that its regulatory interventions may have on economic progress, including a thorough consideration of the costs, effectiveness and perceptions of the fairness of regulation.
- E.1.3 The Service will only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving its objectives of ensuring homes are safe and warm.
- E.1.4 In certain circumstances Council officers have power of entry into properties. These powers may be used in order to protect the health and safety of any person, in order to investigate an offence, to prevent the obstruction of an Officer carrying out his/her duty or in order to carry out a statutory duty.
- E.1.5 In certain circumstances council officers have the power to require the production of documents to help them undertake their duty.

### E.2 Housing Health and Safety Rating Scheme (HHSRS)

- E.2.1 The service will use the Housing Health and Safety Rating Scheme to concentrate resources in the areas that need them most and on the properties in the worst condition. Suitably trained officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions
- E.2.2 Following a service request or complaint about poor housing conditions, an initial HHSRS rating will normally be carried out and any follow up advice or action will depend on the outcome of the initial assessment, which may not always involve a visit to the property.

### E.3 Enforcement Options

- E.3.1 When deciding on what enforcement action to take the Service will take into account the Office of the Assistant Director Environment Enforcement Policy and guidance given in the Housing Health and Safety Rating System (HHSRS) Enforcement Guidance.
- E.3.2 Before deciding to serve a statutory notice under the Housing Act 2004, the detailed guidance given by the HHSRS Enforcement Guidance as to whether a notice should be issued and what type, will be taken into account.
- E.3.3 The action taken in relation to both Category 1 and Category 2 hazards will be the most appropriate in all the circumstances, taking into account the hazard score determined under HHSRS; whether there is a duty or discretion to act (in the light of the score); and both potential and actual vulnerable occupants.
- E.3.4 The enforcement options outlined in the HHSRS Enforcement Guidance and contained in the Housing Act 2004 (the Act) are:
- **Improvement Notice** - under section 11 or 12 of the Act (sets out the work that is required to remove or reduce hazards. The Housing Health and Safety Rating System (HHSRS) is the statutory way of assessing housing hazards. The HHSRS Operating Guidance sets out the way in which hazard scores and bands are calculated. Hazards are either classified as Category 1 (most serious) or Category 2 to an acceptable level within a certain timescale) – available for Category 1 and Category 2 hazards
  - **Prohibition Order** - under section 20 or 21 of the Act (prohibits the use of part or all of a property for some or all purposes, or occupation by particular numbers or descriptions of people) – available for Category 1 and Category 2 hazards.
  - **Suspended Improvement Notices and Prohibition Orders** – these notices come into effect on a certain date or when certain conditions are met or varied)
  - **Emergency Remedial Action** - under section 40 of the Act (allows the Service to take or arrange whatever remedial action considered necessary to remove an imminent risk of serious harm)
  - **Emergency Prohibition Order** - under section 43 of the Act (prohibits the use of all or any part of the premises with immediate effect)
  - **Hazard Awareness Notice** - under section 29 of the Act (makes the responsible person aware of the existence of a hazard and the steps that may be taken to remove or reduce it to an acceptable level). No further action is required by the person served with the notice, but any hazard awareness notices served may be monitored and if reasonable progress has not been made to remedy the hazard the Council have the ability to review the action and consider taking other action if appropriate.
  - **Demolition Order and Clearance Area** available under Part 9 of the Housing Act 1985 as amended

- E.3.5 In addition, prior to taking certain enforcement action the service may have to consult with Devon and Somerset Fire and Rescue Service, or may need to make an application to the Residential Property Tribunal Service.
- E.3.6 In certain circumstances, it may also be necessary to carry out a Neighbourhood Renewal Assessment as part of an option appraisal process, in order to determine the most satisfactory course of action. This is a process whereby the cost of taking one course of action is compared and balanced against the cost of another, to determine which is the most appropriate.
- E.3.7 The Council has a duty under Part 1 of the Housing Act 2004 to take enforcement action where Category 1 hazards exist. Therefore, a statutory notice will usually be served for all properties where Category 1 hazards exist, unless the owner or person in control undertakes works voluntarily and commences such works before a notice would ordinarily be served.
- E.3.8 *Discretionary power to deal with Category 2 hazards* Under Section 7 of the Housing Act 2004, local authorities have a power rather than a duty to take enforcement action with respect to Category 2 hazards. As with Category 1 hazards, the Council has powers to require that Category 2 hazards are removed or reduced to an acceptable level. The same types of notice and order are available except for Emergency Remedial action and Emergency Prohibition Orders. The powers to make a Demolition Order or to declare a slum clearance are included in section 7 of the Housing Act 2004 as options to deal with Category 2 hazards, however only in circumstances prescribed by Order of the Secretary of State. To date the Government has not made such an Order.

#### **E.4 HMO licensing**

- E.4.1 A licence is required in HMOs of 3 or more storeys with 5 or more persons in 2 or more households sharing the facilities. Since April 2006 Exeter City Council has widely publicised the need for these HMOs to be licensed and will continue to publicise the requirement to have an HMO licence.
- E.4.2 Operating an unlicensed HMO
- E.4.3 Exeter City Council's focus of enforcing the HMO licensing provisions will be on detecting unlicensed HMOs and requiring landlords of those HMOs to apply for licenses, at the same time consideration will be given to whether or not formal action is appropriate. Systematic surveys using all relevant information held by the Council will be used to find unlicensed HMOs. When unlicensed HMOs are found and an application is received the license will be issued with a reduced license term to remove any advantage over those landlords that applied at the appropriate time.
- E.4.4 If a landlord has approached the Council for a license an informal approach will be adopted so long as the application is subsequently duly made within 14 days. There also may be exceptional circumstances that have resulted in application not being made, these will be considered. In other circumstances the Council will consider taking formal action in the form of a Simple Caution or a prosecution.
- E.4.5 Where landlords have been prosecuted for operating an unlicensed HMO the Council will use Rent Repayment Orders to claim back the Housing Benefit

paid whilst the HMO was unlicensed and provide tenants with information and advice on how they can claim back the rent they paid whilst the HMO was unlicensed.

E.4.6 Breach of licence conditions

E.4.7 Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Informal action will be taken in relation to minor breaches of the licence conditions, for example not producing certificates on time, as long as the breaches have not significantly affected a person's health safety or welfare.

E.4.8 Formal action will be considered where there have been serious and or persistent breaches of licence conditions. Each case will be judged on its own merits and regard will be had for Code for Crown prosecutors and Home Office Guidance on Simple Cautions.

E.4.9 Interim Management Orders

E.4.10 These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers or residents is at risk. Interim Management Orders (IMOs) can be made where there is no realistic prospect of an HMO licence being granted. Effectively the management and rental income from a property is taken away from the current landlord for up to a year. The Council can apply for a Final Management Order to be approved that can last for up to five years.

**E.5 Owner occupiers**

E.5.1 Occasions will arise whereby Category 1 hazards are identified in owner occupied properties where the owner is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the Council. The duty to take action, as required under Section 5 of the Housing Act 2004 still applies. However it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health and safety of the public or visitors to the property.

E.5.2 Where it appears that there would otherwise be little prospect of such a hazard being remedied within the forthcoming 12 months then the hazard will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice. This fulfils the Council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences.

E.5.3 In some exceptional cases, in line with the guidance given by the HHSRS Enforcement Guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner occupied properties. No charge would generally be made for the service of such a notice and the Service will work with the owner occupier and others (such as the Home Improvement Agency) to offer advice and assistance in complying with the requirements of the notice.

E.5.4 Where financial assistance is provided to owner occupiers in the form of a loan, there are conditions attached. Breach of any of the loan conditions may result in formal enforcement action, e.g. to recover funds.

## **E.6 Housing Improvement Financial Assistance**

E.6.1 This Enforcement Policy should be read in conjunction with the current Private Sector Housing Strategy, which outlines the financial and other assistance available to improve housing conditions in Exeter.

## **E.7 Overcrowding**

E.7.1 There are significant levels of overcrowding in Exeter particularly where there are larger families..

E.7.2 We will investigate complaints from tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions.

E.7.3 We will work with the Council's Housing Options Team where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.

## **E.8 Vacation of a property following statutory action**

E.8.1 If a landlord confirms in writing that he/she intends to use the house for their own or own family's use, then any Improvement Notice served may be revoked and replaced by a Hazard Awareness Notice.

E.8.2 If the landlord fails to give any indication regarding his/her future proposals for the property or if it appears that the property is likely to remain vacant, then the Improvement Notice will continue to be enforced as the operation of an Improvement Notice does not depend on tenure.

E.8.3 Where a landlord gives an undertaking in writing that the required remedial work will be done prior to any new tenant moving in, then the improvement notice may be suspended until such time that the house is reoccupied or some other stated date. The situation will be reviewed at least every six months.

E.8.4 Where the property becomes vacant following the service of an Improvement Notice relating to Category 2 hazards, the notice will normally be revoked and replaced by a Hazard Awareness Notice. Suspension of the notice as in the case for Category 1 hazards may however be appropriate where it appears that there is a high likelihood that the property will be re-let.

E.8.5 In all cases, the Service will seek to prevent retaliatory evictions (where a landlord takes action to gain possession of a property lawfully following a tenant complaining about poor housing conditions). Where there is evidence of a retaliatory eviction, the Service will continue to require any necessary improvements to the property to be made and, if necessary, will take enforcement action in accordance with the principles contained in this Enforcement Policy.



## **E.9 Charges and recovery of costs**

- E.9.1 The Council will usually make a charge for statutory notices served under Part 1 of the Housing Act 2004, as permitted by section 49 of the same Act. The charges will be reviewed and published annually. Any such charges will be invoiced after a minimum of 28 days has elapsed from the date of service of the notice.

## **E.10 Works Carried Out in Default**

- E.10.1 The Council will consider completing work in default in all appropriate cases and seek to recover the costs from the owner or occupier, together with an administrative charge.
- E.10.2 Recovery of costs including the Councils Enforced Sale Procedure  
The council will seek to take reasonable steps to recover any costs and expenses incurred in taking enforcement action. This will include considering the use of the Council's Enforced Sale Procedure where work is carried out in default of a statutory notice and the person responsible for repaying the costs and expenses has failed to repay them.

## APPENDIX F: ENVIRO-CRIME AND STREET SCENE

### F.1 Introduction

- F.1.1 The purpose of this document is to create a clear and consistent policy (“the Policy”) for use by all departments involved in the enforcement of issues related to the street scene and public spaces. Further guidance is available in the DEFRA *Guidance on the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and related legislation*.
- F.1.2 The condition of our environment affects our lifestyles and quality of life. Dealing with street scene problems throughout the City contributes to the attainment of one of the Council’s purposes; “improving the environment and neighbourhoods” and “keeping my city safe and looking good”. It has been shown that there are strong links between antisocial behaviour and the quality of the environment. Environmental improvements are thought to lead to a decline in anti-social behaviour.
- F.1.3 Responsibility for maintaining a quality environment rests both with the Council and the general public (that is to say, residents, visitors and businesses) in the following ways:
- F.1.4 **The Council** – will provide the physical infrastructure that helps to create a cleaner environment such as litter bins and dog bins. The Council will also provide a level of enforcement through enforcement officers. In addition, the Council will promote educational messages to both children and adults through a variety of sources. The Council will also provide a regular cleansing regime for all of our street scene and public spaces.
- F.1.5 **Public** – In response to the provision made by the Council, the public are asked to manage waste in a responsible way. For example, to dispose of rubbish in accordance with the collection schedule for their area, to dispose of litter and dog fouling in the litter bins and dog bins provided throughout the city (and recycling banks where available), to take bulky waste to the city’s Civic Amenity Sites and to use only licensed waste carriers where this is appropriate. Individuals are advised **NOT** to approach people who are not adhering to this policy, but to inform one of the officers listed above with as much detail as possible about the incident. The public are also encouraged to keep their immediate environment safe and clean to prevent the attraction of pests and keep the neighbourhood looking clean and tidy.
- F.1.6 The street scene issues considered in this Policy are:
- Dog fouling
  - Fly-tipping/Litter/Waste
  - Graffiti
  - Fly-posting
  - Sites that are detrimental to the amenity of a neighbourhood

- Nuisance vehicles
- Caravans parked on the highway (Exeter City Council Act 1987)
- Public Health Nuisances (as defined in the EPA 1990)

## **F.2 Underlying Principles**

- F.2.1 Enforcement will be undertaken following the guiding principles in this Enforcement Policy (See Section 3).
- F.2.2 To ensure that a strong and consistent enforcement approach is adopted, legislation will be enforced with the following principles in mind:
- This policy will apply to juveniles and where any formal action is taken the young person's parents will be involved in the process.
  - Where a fixed penalty fine is available for an offence, it will normally be applied at each opportunity.
  - A "zero tolerance" stance will be taken by enforcement officers and therefore in most circumstances formal action will be taken rather than issuing warnings.
  - Where fixed penalty fines are ignored, legal proceedings will be commenced if two fixed penalty notices have already been issued or if a fixed penalty fine is not paid.
- F.2.3 All Council officers involved in enforcing this policy will be given adequate training.
- F.2.4 The health and safety of such officers is of primary concern when dealing with offences and training will cover means by which danger to officers can be minimised.
- F.2.5 In relation to problems with private property, the Council will always seek the owner's co-operation in clearing/improving sites. However, where evidence permits or there is no co-operation the Council will use whatever powers are available to it to bring about an improvement of an area.

## **F.3 Street Scene issues**

### **F.3.1 Dog Fouling**

Dog fouling has become less of a problem in the city in recent years due to robust enforcement, education of dog owners and the extensive provision of dog bins throughout the city. Dog mess is aesthetically unsightly and potentially transmits diseases particularly to young children, one of which, toxocaraiasis, can cause blindness. Dog mess should be picked up, bagged and placed in a dog bin.

Following the introduction of new powers for dealing with dog control in the Clean Neighbourhoods and Environment Act 2005 four new dog control Orders were adopted by the Council and came into force on 1February 2007:

- **The Fouling of Land by Dogs (Exeter) Order 2006** – introduced the offence of failing to pick up faeces after a dog has fouled on any land open to the air and to which the public has access, with or without payment, in Exeter.
- **The Dogs Exclusion (Exeter) Order 2006** – excludes dogs from enclosed areas such as children’s play areas. This Order includes parts of the Cathedral Green.
- **The Dogs on Leads (Exeter) Order 2006** – requires dogs to be kept on leads on each and every length of road (which includes pavements and/or footways) and also at St Thomas Pleasure Ground, Northernhay Gardens, Bury Meadow and Pines Gardens Pleasure Grounds and on parts of the Cathedral Green.
- **The Dogs on Leads by Direction (Exeter) Order 2006** – a person in charge of a dog shall be guilty of an offence if he does not comply with a direction given to him by an authorised officer to put and keep the dog on a lead. This applies to any land in the open air to which the public have access. This power is used where dogs being exercised off the lead are causing problems to other users of the land and it is felt the dog should be kept under control.

For copies of the Orders see

<http://www.exeter.gov.uk/index.aspx?articleid=6292>

If an offence is witnessed the person in charge of the dog will be issued with a £75 fixed penalty notice. Payment of which will discharge the person’s liability for the offence. If the fixed penalty is not paid legal proceedings will be commenced.

### F.3.2 **Fly-tipping/Waste/Litter**

***Fly-tipping/waste/litter*** is a problem in some parts of the city. It is not only unsightly but can also attract rodents and cause a danger to the public. The Council’s priority is to remove small quantities of fly-tipped material as soon as possible thereby keeping the city “safe and looking good”. However, where “hotspots” are identified the Council’s intention will be to investigate the incident thoroughly with a view to taking formal action.

Bulky waste can be disposed of at the Exton Road and Pinbrook Recycling Centres. The Council also provide a bulky waste collection service for which there is a charge see <http://www.exeter.gov.uk/index.aspx?articleid=9516>.

***Fly-tipping*** - It is an offence under Section 33 of the Environmental Protection Act 1990 to deposit waste on any land without a suitable licence. A person who commits an offence under this section shall be liable:

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both; and

(b) on conviction or indictment, to imprisonment for a term not exceeding two years or a fine or both.

In addition, if a person abandons any rubbish on a highway they shall be guilty of an offence under the Refuse Disposal (Amenity) Act 1978.

Under Section 59 of the Environmental Protection Act 1990 the Council may by notice require the occupier of the land to remove any waste deposited or the Council may remove such material and charge the person responsible for its disposal.

If any person is found to be dumping waste illegally the following actions will be taken;

- The offence will be investigated, and the offender will be invoiced for the cost of removing the waste. They will also be informed of the location of Household Waste Recycling Sites where waste can be disposed of safely and legally.
- legal proceedings will also be considered dependent upon the seriousness of the offence and **all** related circumstances e.g. persistent offences.
- If the waste is in anyway harmful, then the information related to the case will be passed to the Environment Agency for consideration for prosecution in accordance with the national memorandum of understanding.

### ***Duty of Care***

The Environmental Protection Act 1990, Section 34 provides for a duty of care for waste that is generated on a premise. The legislation states:

“..it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances :—

- (a) to prevent any contravention by any other person of section 33 (illegal disposing of waste);
- (b) to prevent the escape of the waste from his control or that of any other person; and
- (c) on the transfer of the waste, to secure—
  - (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
  - (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section and to comply with the duty under this subsection as respects the escape of waste.”

Commercial premises (commercial & industrial wastes) -Environmental Protection (Duty of Care) Regulations 1991.

Waste storage must be safe, secure, sufficient and suitable and a waste transfer note (WTN), containing a description of the waste, must be provided for all waste that is removed from a premises. Further advice can be obtained

regarding these requirements in the Code of Practice on Litter and Refuse (DEFRA, April 2006). A fixed penalty notice (£300) can be issued for failure to produce a waste transfer note.

In 2005 this duty was extended (partially) to include domestic householders. The Waste (Household Duty of Care) (England and Wales) Regulations 2005 states:

“It shall be the duty of the occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.”

This, basically, requires householders to make all reasonable enquiries of businesses, etc. who take away their domestic waste, although it is not necessary for them to obtain a WTN.

### ***Presentation of domestic and commercial waste for collection***

In order to deal with domestic refuse put out too early for collection, contamination of recyclables or side waste, a notice can be served in accordance with the Environmental Protection Act 1990 Section 46 and can stipulate the following control measures:

- (a) the size, construction and maintenance of the receptacles;
- (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
- (c) the placing of receptacles for that purpose on the highway (subject to proper permission of the Highway Authority);
- (d) the substances or articles which may or may not be put into receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them;
- (e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

Breaching such a notice is an offence and where an authorised officer of a local authority has reason to believe that a person has breached such a notice a fixed penalty notice can be issued (currently £100).

Should a prosecution be pursued the Council needs to be able to demonstrate that, beyond reasonable doubt, the offence has been committed by the individual concerned. The maximum fine per offence, that the Magistrate's can give, is £1000 (level 3). This is likely to vary depending upon history, extent of dumping, attitude of offender, plea (guilty or not guilty), etc.

If commercial or industrial waste is produced at a premises and the officer believes that if it is not stored in receptacles of a particular kind it is likely to cause nuisance or be detrimental to the amenity of the area, a notice under the Environmental Protection Act 1990 Section 47 may be served. This notice can require the following works:

- (a) the size, construction and maintenance of the receptacles;
- (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
- (c) the placing of receptacles for that purpose on the highway (subject to proper permission of the Highway Authority);
- (d) the substances or articles which may or may not be put into receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them;
- (e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

Breaching such a notice is an offence and where an authorised officer of a local authority has reason to believe that a person has breached such a notice a fixed penalty notice can be issued (currently £100).

Should a prosecution be pursued the Council needs to be able to demonstrate that, beyond reasonable doubt, the offence has been committed by the individual concerned. The maximum fine per offence, that the Magistrate's can give, is £1000 (level 3). This is likely to vary depending upon history, extent of dumping, attitude of offender, plea (guilty or not guilty), etc.

### ***Litter***

Litter leaves residential and commercial areas looking unsightly and discourages visitors to our city. Litter bins are strategically placed all over the city for public use, more so in commercial areas. If a litter bin is not available then all litter should be retained by the individual until one is found. Litter can be as small as a sweet wrapper, as large as a bag of rubbish or it can also mean a lot of items scattered about and includes cigarette butts and chewing gum.

The Environmental Protection Act 1990 Section 87 states it is an offence if any person throws down, drops or otherwise deposits any litter, and leaves it, in any place which is open to the air, this includes land and water.

There are defences available to the littering offence, namely:

- the deposit was authorised by law;
- the owner of the land gave their consent for the deposit.

If any person is seen to be dropping litter or found illegally depositing waste out onto the public highway the following actions will be taken:

- the offender will be issued a fixed penalty notice (£75) for a first offence.
- the offender will be asked to remove the item(s) of waste illegally deposited etc or litter that has been dropped. They will also be informed of the impact litter has on the environment and advised as to how they should legally deal with their waste.

- If the offender fails to pay this, then legal proceedings will be considered

Should a prosecution be pursued the Council needs to be able to demonstrate that, beyond reasonable doubt, the offence has been committed by the individual concerned. The maximum fine per offence that the Magistrates can give is £2500 (level 4). This is likely to vary depending upon history, extent of littering, attitude of offender, plea (guilty or not guilty), etc. There are two evaluations that the officer should consider when dealing with litter. One is the suitable action that can be taken against the person(s) who carried out the littering offence and the other considers the land on which the offence has taken place (private or public) and the potential requirement to serve a legal notice on person(s) responsible for the area. (See below – **Litter Clearing Notices etc**).

Where a complaint of an act of littering is referred to the Council, details of location and time that the offence is alleged to have occurred and a description of the offender, and their littering activities should be obtained. Where a regular pattern is established, an authorised officer should carry out patrols at relevant times to attempt to witness an offence. Where a witness, (including operating staff at the Control Centre) is prepared to give a detailed statement of an alleged offence, the authorised officer will undertake an investigation.

#### ***Litter Clearing Notices & Street Litter Control Notices (LCN/SLCN)***

The Defra code of practice on Litter and Refuse sets out 4 cleanliness standards (based on the methodology for street cleansing best value performance indicators)

**Grade A:** No litter refuse (no litter or refuse, in any shape or form –the presence of one small piece of litter downgrades it to B)

**Grade B:** Predominantly free of litter and refuse apart from some small items

**Grade C:** Widespread distribution of litter and/or refuse with minor accumulations

**Grade D:** Heavily affected by litter and/or refuse with significant accumulations

A LCN/SLCN can only be used where land is already defaced by litter and/or refuse, or in the case of SLCN quantities of litter and refuse are likely to lead to defacement.

Most areas of land will fall within Grade C. The aim of the notices are to restore land to Grade B standard, however when determining works that should be undertaken at a site the Council must consider practicability and enforceability. (The notice cannot specify cleaning to a Grade A standard)

The recipient of a formal notice can appeal to a Magistrates Court (within 21 days of its service), for the following reasons:

- There is a material defect or error with the notice (e.g. it is not worded correctly)



- The notice has been served on the incorrect person
- The land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality
- The action required is unfair or unduly onerous

If an appeal is lodged the notice is suspended until the appeal has been determined.

The authorised officer should make reasonable enquiries to ascertain the name or proper address of any person who is responsible for the area of land.

If a LCN/SCLN is not complied with, the authority or any person authorised by the authority may remove, clear or otherwise remedy the defacement as per specified by the notice. To carry out this work the authority (or any person authorised by the authority) may enter any land to the extent reasonably necessary for that purpose. A LCN/SCLN must include an explanation of the above works in default. The recipient of the notice may also be prosecuted for non-compliance with the notice. As an alternative to prosecution a fixed penalty notice can be issued which carries a fine set at the default level of £100.

Where a LCN/SCLN has been served and works carried out, all reasonable costs can be recovered. These costs can only be recovered from the recipient of the notice and for work that was carried out following the service of the notice.

The costs can only be recovered if a further notice has been served giving the amount and details of the expenditure which it proposes to recover.

### **F.3.3 Graffiti**

Graffiti can include drawings, scribbles, messages or 'tags' that are painted, written, sprayed or etched on walls and other surfaces. Graffiti is aesthetically unsightly and constitutes criminal damage. This problem is becoming more noticeable throughout the City, and clearing it from public land creates a significant cost for the Council.

Offensive Graffiti is illegal and unauthorised and may contain some or all of the following elements:

- Offensive Language
- Language of a political, racial, religiously insulting or inciting nature
- A graphically explicit image
- A hate statement

The Council has a commitment to remove any offensive graffiti on public land within 24 hours of it being reported. Council officers do not have the authority to enter private land without the owners consent to remove graffiti.

The Council has the power to, amongst other things:

- Remove graffiti from privately owned or commercial property following a request from the owner and subject to the receipt of a signed indemnity form.
- Charge for this service

- Issue “Graffiti Removal Notices” under section 43 of the Anti-Social Behaviour Act 2003. Requiring the person responsible for the “relevant surface” to remove the defacement within a period of 28 days where the defacement is detrimental to the amenity of the area or is offensive.
- Where the recipient of a “Graffiti Removal Notice” fails to comply with the requirements of the Notice, an authorised officer of the local authority may enter the land to the extent necessary to enable it to remedy the defacement and may recover expenditure reasonably incurred in exercising this power
- Issue Fixed Penalty Notices (£75) where an authorised officer has reasonable grounds to believe that an offence of criminal damage/graffiti has been committed.
- Initiate prosecution proceedings where considered appropriate to do so under Section 215 Town and Country Planning Act 1990 (See below).

The Council are required to make reasonable attempts to enter into partnerships with property owners. All parties should work in constructive partnerships to remove graffiti and fly-posting (see below) within agreed times to minimise the need for removal notices. **Expand this part based on work of redesign team?**

#### **F.3.4 Fly-posting**

Fly-posting is illegal and causes commercial and living areas to look dirty and uncared for. Any poster that is to be placed in the city requires the permission of the Council. If permission is not sought and not given following an application, posters will be removed and the costs of removal recovered from the offender.

The Town and Country Planning Act 1990 states that;

224 – (1) Regulations under section 220 may make provisions for enabling the local planning authority to require –

- (a) The removal of any advertisement which is displayed in contravention of the regulations, or
- (b) The discontinuance of the use for the display of advertisements of any site which is being used in contravention of the regulations.

The Anti-social Behaviour Act 2003 allows a local authority officer to issue a fixed penalty notice (£75) in relation to fly posting offences.

Regulations provide that no advertisements may be displayed without consent of the local planning authority, unless it falls within one of the exclusion or benefits from deemed consent. If any business or individual display advertisements in contravention of the regulations, then the following actions will be taken;

- In appropriate circumstances a fixed penalty notice (£75) will be issued

- If an advertisement has a detrimental impact on the environment and/or highway safety the council will remove it immediately and invoice the fly poster for the costs of removal.
- All other advertisement will be investigated and the owner will be asked to remove them within 7 days.
- If they are not removed within 7 days the Council will remove them and the fly poster will be sent an invoice for the cost.
- Consideration will be given in each case to the appropriateness of instituting legal proceedings dependent upon the circumstances e.g. persistent offenders.

### **F.3.5 Sites detrimental to the amenity of a neighbourhood**

Derelict or unsightly properties can attract acts of anti-social behaviour and can be misused. They can also cause neighbourhoods to look unsightly and detrimentally affect property prices.

The Town and Country Planning Act 1990 States;

S215 – (1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner or occupier of the land a notice under this section.

If the condition of a site (land or building) is seriously detrimental to the amenity of a neighbourhood then the following action will be taken;

- A letter will be sent to the owner or occupier to request that the land is bought back to an acceptable standard within a specific timescale.
- If no action is taken then a notice will be served upon the owner that will give precise steps to be taken and a timescale in which this is to be completed.
- If no action is taken, then the offender will be investigated and legal proceedings will be considered. There is no right of appeal against this form of notice.

### **F.3.6 Nuisance Vehicles**

Nuisance vehicles can be classified either as abandoned vehicles, vehicles for sale on the road or vehicles being repaired on the road in the course of a business.

Nuisance vehicles can have a significant impact on our local environment. They devalue the area, promote deterioration and can lead to anti-social behaviour.

## **Abandoned Vehicles**

The Council has a duty to investigate all reports of abandoned and untaxed vehicles. Vehicles can be abandoned on land open to the air and this includes both public and private land.

You can use the following criteria to help determine whether a vehicle is abandoned:

- Has the vehicle been parked without moving for two weeks or more?
- Is the vehicle untaxed?
- Are there any flat tyres or removed wheels?
- Is the windscreen or any of the windows broken?
- Has the vehicle been damaged or vandalised?
- Is there rubbish inside the vehicle?
- Are there wires hanging from the dashboard?

If the answer to more than one of the above criteria is yes, the vehicle may be an abandoned vehicle.

The Refuse Disposal (Amenity) Act 1978 states the following on the removal of abandoned vehicles;

...Where it appears to a local authority that a motor vehicle in their area is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway, it shall be the duty of the authority...to remove the vehicle.

If a vehicle is reported to be abandoned an authorised officer will visit and inspect the vehicle, then the following actions will be taken;

- A 7 day notice will be served on the vehicle if it is considered to be abandoned. If the vehicle is a “wreck” a 24 hour notice will be served on the vehicle. If the owner takes no action, then it will be removed and disposed of or stored depending on the circumstances.
- DVLA records will be checked in an attempt to find details of the last registered keeper of the vehicle.
- Attempts will be made to contact the registered keeper of the vehicle.
- Officers will also liaise with the local DVLA office and the Police if the vehicle is untaxed or parked dangerously.

Abandoning a vehicle is a criminal offence. The council can prosecute the last registered keeper of a vehicle for this offence.

The maximum penalty on conviction is a fine not exceeding £2,500 and/or imprisonment for a term not exceeding three months. Alternatively, the Council may issue a fixed penalty notice of £200. In the first instance the Council will issue a fixed penalty notice for a first offence.

The Council provides an amnesty for unwanted vehicles. There is currently an £42 amnesty fee for the removal of unwanted vehicles in the Exeter City Council area only. Owners wishing to take advantage of the Amnesty

Disposal service are asked to visit the Customer Service Centre at the Civic Centre together with:

- the keys to the vehicle
- the log book (V5 document)
- a form of personal identification with a photograph (e.g. driving license or passport)
- £42 fee

### ***Vehicles for sale on the highway***

The offence of selling vehicles on the road is intended to target those people who run a business selling motor vehicles and use the road as a mock showroom. It is not intended to target individuals selling their private car. It is intended to combat the nuisance caused by the presence of several vehicles being offered for sale in the same street or area for the purposes of a business.

The Clean Neighbourhood and Environment Act 2005 states that an offence is being committed when there are two or more vehicles within 500 metres of each other being offered for sale by the same person.

It is recognised that a private individual may have more than one vehicle to sell and may park them close together in the street. However it is anticipated that this will be rare and that his/her ownership of the two (or more) vehicles can be easily established by local enquiries. It can also be ascertained whether the owner practices this on a regular basis.

A person will not be convicted if they can prove they were not acting for the purposes of a business.

Selling a vehicle in contravention of the above is a criminal offence. The maximum penalty on conviction is a fine not exceeding £2,500. Alternatively, the Council may issue a fixed penalty notice of £100. In the first instance the Council will issue a fixed penalty notice for a first offence.

### ***Repair of vehicles on the highway***

The offence of repairing vehicles in the street is primarily aimed at those carrying out repairs as part of the running of a vehicle repair business. However, if a private individual repairs their own vehicle in the street, it will still be an offence where this gives reasonable cause for annoyance to people who live nearby. Regardless of whether it is done in the course of a business, an offence can still be committed.

This legislation is not aimed at roadside repair organisations or mechanics repairing broken down vehicles at the roadside as long as the work on the vehicle is completed within 72 hours.

Repairing a vehicle in contravention of the above is a criminal offence. The maximum penalty on conviction is a fine not exceeding £2,500. Alternatively, the Council may issue a fixed penalty notice of £100. In the first instance the Council will issue a fixed penalty notice for a first offence.

### **F.3.7 Caravans parked on the highway**

In the past the parking of caravans over the winter months on the street had a significant impact on the local environment in certain parts of the City.

The Exeter City Council Act 1987 Section 21 introduced a power that the Council could use to remove unlawfully parked caravans, this power will be used to deal with caravans which are parked on the highway for long periods of time and will include caravans attached to a vehicle.

If a caravan is parked on the highway the Council will take the following action:

- Place a notice on the caravan stating that the Council intends to remove the caravan after 14 days.
- If the caravan remains in the same place on the highway after 14 days have expired it will be removed for safe custody and the Council will recover from the owner of the caravan all reasonable expenses for the removal and safe custody of the caravan.
- After 2 months the Council can dispose of the caravan in accordance with Section 4 of the Refuse Disposal (Amenity) Act 1978.

### **F.3.8 Statutory Public Health Nuisances**

Properties that are not kept clean and free of rubbish can attract pests such as rodents. Such pests can also travel to neighbouring properties which can exacerbate a problem.

The Environmental Protection Act 1990 Section 80(1) states that;

Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements:

- (a) Requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
- (b) Requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

If a property is thought to be creating a public health nuisance then the following action will be taken;

- The owner or occupier will be asked to remove the rubbish or clean the area that is creating the nuisance. They will also be informed of the legislation surrounding public health nuisances.
- If the owner or occupier takes no action within a reasonable timescale, then an abatement notice will be served upon them requiring them to

remove or clean the area that is creating the nuisance within a specified time.

- If the owner or occupier takes no action then the nuisance will be removed by the Council and an invoice will be issued for any costs.
- Consideration will be given to the institution of legal proceedings dependent upon the circumstances of each case. The maximum penalty on conviction is a fine not exceeding £5,000 for an offence relating to a domestic premises and £20,000 for an offence relating to an industrial, trade or business premises.

## APPENDIX G: PRIVATE WATER SUPPLIES

### **G.1 Introduction**

- G.1.1 The Council has a duty to monitor the quality of private water supplies under the Water Industry Act 1991. If the water supply fails to meet the requirements of the appropriate Regulations, a Notice will be served requiring the supplier to take steps to improve the supply to an acceptable standard or to arrange an alternative suitable supply. The Council may arrange to provide a suitable supply in default with costs being recoverable from the supplier.
- G.1.2 The Council also has a duty to monitor the quality of water supplied by the private water companies and to notify the Drinking Water Inspector if poor quality is observed.

### **G.2 Private Water Supply Regulations 2009**

- G.2.1 The Private Water Supply Regulations 2009 has placed a duty on the council to undertake risk assessments on all small and large supplies.
- G.2.2 When an officer discovers a defect which in their opinion will be a serious risk to health an improvement notice will be served under regulation 18 of the 2009 Regulations. The risk assessment report will detail recommendations for improvements and a timescale for completion, however if there is sample failure attributed to the defect identified in the report, an enforcement notice will be served.
- G.2.3 If a water sample fails and it is a risk to health then an enforcement notice will be served. However if the failure indicates the water is unwholesome but is not a health risk then action can be taken under section 80 of Water Industry Act, the Health Protection Agency and the Drinking Water Inspectorate (or equivalent organisation) should be consulted.
- G.2.4 For cases involving a single dwelling supply which is in the private rented sector, action can be taken under Housing Act 2004. To avoid a conflict of interest, if a risk assessment is required then a report from a third party (authorised by the council) will be allowed.

### **G.3 Service Charges**

- G.3.1 The scale of charges for the risk assessment, sampling and analysis of private water supplies in accordance with the provisions of the Private Water Supplies Regulations 2009 will be set by the Council's Environmental Health Committee when appropriate.