ENFORCEMENT POLICY
Part 1 Background and General Statement.

1. Background

1.1. The Council has statutory responsibility to enforce and advise on a wide range of regulatory legislation.

1.2. Regulatory legislation provides many of the provisions and powers necessary for the council to be able to fulfil its functions and achieve its objectives; both nationally and locally.

1.3. The Council also has the ability to impose non legislative enforcement powers, such as the withdrawal of services.

1.4. The Council has an important community leadership role in this area with a focus on the wellbeing of our community. This policy is essential in enabling the Council to use enforcement to effect positive changes within the community.

1.5. In using such legislation and powers and carrying out these responsibilities the Council must balance the need for effective and efficient enforcement with its effect on:

- Human rights,
- Diversity issues,
- Other community objectives; including supporting economic progress,
- Fairness, consistency and equity,
- Proportionality and
- Transparency and accountability.

1.6. Section 21 of the Legislative and Regulatory Reform Act 2006 places a duty upon regulators (including Local Authorities) to have regard to the five principles of good regulation set out in the Act; -

   S21. Those principles are that—regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; regulatory activities should be targeted only at cases in which action is needed.

   and the Government’s (draft) Compliance Code (incorporating the Hampton and Macrory Reports). Section 4 of this document encompasses these provisions.

1.7. This document contains the Council’s statement of policy in respect of all forms of enforcement, legislative or otherwise, carried out by council officers and the framework upon which any action should be based.

1.8. This policy may be used to challenge council enforcement that has not followed its provisions.
2. **General Statement**

2.1. Officers of the Council will consider the use of all available legislation and enforcement options to pursue national, regional and local outcomes as prioritised.

2.2. When enforcement powers are used in pursuance of these outcomes, or otherwise, officers will balance the need for effective and efficient enforcement with its effect upon; -

- Human rights,
- Diversity issues,
- Other community objectives; including supporting economic progress,
- Fairness, consistency and equity,
- Proportionality and
- Transparency and accountability.

2.3. When using enforcement powers officers will also consider the five principles of good regulation provided in Section 21 of the Legislative and Regulatory Reform Act 2006;

*Those principles are that— regulatory activities should be carried out in a way which is* transparent, accountable, proportionate and consistent; regulatory activities should be targeted only at cases in which action is needed.*

and the Government’s draft Compliance Code (incorporating the Hampton and Macrory Reports)(Incorporated in part 2 below).

2.4. Any enforcement action, legislatively based or otherwise, will have regard to an assessment of risk to the national, regional or local community using the principals set out below (para 4.2) – incorporating the principles of good regulation and the draft Compliance Code.

2.5. Officers will also give due regard to any guidance contained in service specific codes of practice and other nationally recognised sources. Specific procedures, guidance and service level policies will be prepared and reviewed as necessary by the appropriate Head of Service.

2.6. Any departure from the principles of this enforcement policy must be exceptional, justifiable and agreed by the appropriate head of service before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

2.7. The Council will ensure that all authorised officers are fully informed of this revised policy. Heads of Service will ensure that all officers are acquainted with its requirements and follow its principles.

2.8. Officers will ensure that all customers who are the subject of any enforcement action are fully informed of the existence of this policy and of how to obtain a copy.

2.9. This policy will be fully consulted on to take into account the views of all partners, stakeholders and the local community as a whole.

2.10. This policy will be subject to regular review.
Part 2 - The Principles Of Good Regulation And (Draft) Compliance Code.

3. The Council accepts the principals of Good regulation and the Compliance Code.

3.1. The Council hereby formally accepts the principles of good regulation provided within section 21 of the Legislative and Regulatory Reform Act 2006 and the (draft) Compliance Code.

3.2. The Council recognises that the provisions of Compliance Code apply to the determination of policy, standards and guidance and are not binding upon the exercise by any officer of any specified regulatory function in individual cases.

3.3. The Council recognises that the provisions of the Compliance Code are subject to any other legal requirement affecting the exercise of regulatory functions, including EC law obligations.

3.4. The Council recognises that the Compliance Code will supersede the 1998 Enforcement Concordat.


4.1 - Supporting economic progress

4.1.1. Officers should consider the impact that their regulatory interventions may have on economic progress, as well as on perceptions of fairness, effectiveness and costs of regulation.

4.1.2. They should only adopt a particular regulatory approach if the benefits justify the costs and it entails the minimum burden compatible with achieving desired regulatory objectives.

4.1.3. When officers set standards or give guidance in relation to the exercise of their functions they should allow for reasonable variations to meet local government and community priorities.

4.2 - Risk Assessment

4.2.1 Officers must use risk assessment to concentrate resources in the areas that need them most, where they will be most effective and where risk is highest. Risk assessment should be based on all relevant, good-quality data available. It should include explicit consideration of the combined effect of:

- the potential impact of non-compliance, i.e. its adverse effects on regulatory outcomes; and
- the likelihood of non-compliance.
- Local authority priority outcomes

4.2.2 They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:

- data collection and other information requirements;
- inspection programmes;
• advice and support programmes;
• and enforcement and sanctions.

4.2.3 In evaluating the likelihood of non-compliance, regulators should give consideration to all relevant factors, including:
• past compliance records and potential future risks;
• the existence of good systems for managing risks, in particular within regulated entities or sites;
• evidence of recognised external accreditation; and
• management competence and willingness to comply.

4.2.4 Officers should consult and involve regulated entities and other interested parties in designing and reviewing their risk methodologies, and publish details of the methodologies. This does not apply where risk methodologies are provided by national agencies.

4.3 Information and Advice

4.3.1 Officers should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements, are promptly communicated or otherwise made available to make it easier for regulated entities to understand and meet their regulatory obligations.

4.3.2 Such guidance, advice and information should be provided in plain, accessible language and in a range of appropriate formats and media.

4.3.3 Officers should consider involving regulated entities in developing both the content and style of regulatory guidance.

4.3.4 Officers should provide targeted and practical advice that meets the specific needs of regulated entities. Such advice may be provided in a range of formats such as face-to-face interactions, telephone helpline and online guidance.

4.3.5 When offering compliance advice, officers should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice should be confirmed in writing, if requested.

4.3.6 Officers should, where possible*, ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the regulator should seek primarily to provide the necessary advice and guidance to help ensure compliance.

*Exceptions include where contact reveals significant risk to the community or a statutory duty to take action.

4.3.7 Advice services should generally be provided free of charge, but regulators may charge a fee for services in appropriate circumstances, i.e. to cover relevant costs. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support.
4.4 – Inspections

4.4.1 Officers should ensure that inspections and other visits to regulated entities only occur in accordance with a risk assessment methodology, except where:
- visits are requested by regulated entities,
- where a regulator acts on specific intelligence.
- or where enforcement supports the wider objectives of the Authority.

4.4.2 Officers may use a small element of random inspection in their programmes to test their risk methodologies.

4.4.3 Officers should focus their greatest inspection effort on regulated entities where risks assessment shows that both:
- a compliance breach or breaches pose serious risk to regulatory outcomes;
- there is high likelihood of non-compliance by regulated entities, and
- regulation supports the wider objectives of the Authority.

4.4.4 Where two or more inspectors, whether from the same or different regulatory services within the council, undertake planned inspections of the same regulated entity, they should consider collaborating to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

4.5 - Data Requirements

4.5.1 When determining the data they may require from regulated entities, officers should undertake an analysis of the costs and benefits of data requests to regulated entities. Regulators should give explicit consideration to reducing costs to regulated entities through:
- varying data requests according to risk, as set out in section 4.3;
- limiting collection to specific regulated entities sectors/sub-sectors;
- reducing the frequency of data collection;
- obtaining data from other sources;
- allowing electronic submission;
- requesting only data that is legally required.

4.5.2 If two or more officers require the same information from the same regulated entities, they should seek to share data to avoid duplication of collection.

4.5.3 Officers should consider involving regulated entities in vetting data requirements and form design for clarity and simplification. They should seek to collect data in a way that is compatible with the processes of regulated entities and those of other regulators who collect similar data.

4.5.6 Officers should keep their policies and guidance under review with a view to ensuring that their data collection and other information requirements in relation to regulated entities do not involve:
- the imposition of burdens which are unnecessary; or
- the maintenance of burdens which have become unnecessary.
4.6 - Compliance and Enforcement actions

4.6.1 Officers should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, including lighter inspections and less onerous reporting requirements, where risk assessment justifies this.

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

4.6.3 Officers should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review. This means that their sanctions and penalties regime should:

- aim to change the behaviour of the offender;
- aim to 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;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

4.6.4 Officers should also act in accordance with the following Macrory characteristics:

- publish and review an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- follow-up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

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

4.6.6 Officers should interpret and apply their regulations and enforcement policies fairly and consistently between like-regulated entities in similar situations, and where appropriate, ensure that they do.
4.7 – Accountability

4.7.1 Officers should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

4.7.2 Officers should provide courteous and efficient services to regulated entities and others. They should take account of comments from regulated entities and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.

4.7.3 Officers should provide effective and timely complaints procedures that are easily accessible to regulated entities and other interested parties. They should publicise their complaints procedures, with details of the process and likely timescale for resolution.
Part 3 Enforcement Options.

5. **ENFORCEMENT OPTIONS**

5.1. Enforcement actions available to officers may include one or more of the following:-

- take no action
- take informal action (advice or verbal warning)
- refusal to provide services.
- use statute specific powers (without reference to a court) such as prohibitions, notices, orders, seizure/detention of goods, works in default).
- forfeiture by complaint to court.
- refusal or revocation of a licence.
- impose fixed penalties (where legislation permits)
- use formal cautions
- apply for injunctive orders
- prosecute.

5.2. In coming to any decision as to the appropriate form of action, regard shall be had to this policy document and in particular to the following criteria:-

- the principles listed in part 2 above
- the statutory obligations of the Council
- the priorities / objectives of the council and the wider community
- public interest and concern, including views of interested parties – e.g. the police, fire service, social services, home authority, victims etc.
- the seriousness and consequences of any non – compliance / activity.
- the offender’s past history (including previous advice and warnings).
- confidence in/ likelihood of offender correcting matters.
- the cost and actions of enforcement are proportionate to the risks.
- the likely effectiveness of the enforcement options
- the Code for Crown Prosecutors

5.3 Specific enforcement options are considered in Appendix A.

6. **THE RECOVERY OF COSTS AND EXPENSES**
6.1. Wherever possible the council will seek to recover the costs of taking enforcement action.

**Part 4 Management Control.**

7. **MANAGEMENT CONTROL MEASURES**

7.1. In order to ensure consistency of practice and compliance with legal requirements and, where appropriate, Statutory Codes of Practice, management control measures will be used. This is based on an appropriate level of delegation to relevant officers. These are as follows:

- All warnings and other enforcement action short of simple cautions and court action is authorised by an appropriately qualified officer.
- All prosecutions and formal cautions are agreed in line with the Council’s Scheme of Delegation.
- Enforcement will only be undertaken by authorised officers. Only competent and suitably qualified and experienced officers will be so authorised, and their authority will reflect their competence, qualities and experience.

8. **EQUALITY AND DIVERSITY**

8.1. Officers must ensure that enforcement decisions do not unfairly impact upon regulated entities due to their gender, disability, language, ethnicity, religion, political belief or sexual preference.

8.2. This policy shall be provided in any other language or any other form to facilitate ease of understanding. Officers are aware of and respect cultural requirements and when necessary utilise translation and interpretation services (including sign language).

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

9. **POLICY DEVELOPMENT**

9.1. This policy has been developed following consultation with:

   a) Public / consumers – through consumer groups.
   b) Businesses – though Chambers of Commerce.
   c) Councillors.
   d) CMT.
   e) Shoreline
   f) NELC staff involved in enforcement.
   g) NELC Legal department.
   a) Police.

10. Shared Enforcement Role

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

A1. INFORMAL ACTION

A1.1 Informal action may include the following:-

- offering advice
- verbal warnings and requests for action
- the use of letters
- issue of Reports of Inspection

A1.2 The circumstances in which informal action may be appropriate include:-

- Where it is considered informal action will achieve compliance, based on the past history.
- Where confidence in the management of an enterprise is high.
- If the consequences of non-compliance will not pose a significant risk to the community.

A1.3 In taking any action a clear distinction will be made between legal requirements and matters which are recommended as good practice.

A2. Formal action.

A2.1 Formal action may include the following;

- Refusal to provide services.
- to use statute specific powers (without reference to a court) such as prohibitions, notices, orders, seizure & detention of goods, works in default procedures
- forfeiture by complaint to court.
- Refusal or revocation of a licence.
- to impose fixed penalties (where legislation permits)
- to use formal cautions
- to apply for injunctive orders
- to prosecute.
A2.2 The circumstances in which formal action may be appropriate include:-

- Where informal action has not achieve compliance.
- Where confidence in the management of an enterprise is low.
- If the consequences of non-compliance will pose a significant risk to the community.

A3. **Refusal to provide services.**

A3.1 Circumstances in which refusal to provide services is deemed appropriate include:

- Violent conduct towards council officers
- Abusive (including racist, sexist and other diversity issues) conduct towards officers.
- Failure to carry out any reasonable actions properly made by the council (including failure to place bins in an accessible place).

A4. **Statute specific powers** (without reference to a court) such as prohibitions, notices, orders, seizure & detention of goods, works in default procedures

A4.1 Circumstances in which the use of statutory powers is deemed appropriate include:-

- Where significant contraventions of legislation are identified.
- Where there is a lack of confidence in the management to respond to an informal approach.
- Where there is a history of non-compliance with informal action.
- Where standards are generally poor with little management awareness of statutory requirements.
- When, although prosecution is intended, effective action also needs to be taken quickly to remedy significant threats to the community.
- Where there has been a failure to remedy the infringement or carry out necessary works as a result of an informal approach.
- Conditions are so severe as to warrant immediate action.
- To secure evidence.
A5. **Forfeiture by complaint to court.**

A5.1 Circumstances in which the use of forfeiture is deemed appropriate include:

- Where non-compliant goods have been discovered but either a prosecution is not justified or the offender has not been identified.

A6. **Refusal or revocation of a licence**

A6.1 Circumstances in which refusal or revocation of a licence is deemed appropriate, include:

- Where activity or conditions present a significant threat to the community or where there is a serious or persistent breach of the license conditions.

A7. **Fixed penalties and Simple (Formal) cautions**

A7.1 This authority accepts the principle that criminal offences should not automatically be the subject of prosecution.

A7.2 Circumstances in which fixed penalties or Simple (Formal) cautions are deemed appropriate include:

- Will be considered where criteria for a prosecution are satisfied, but the offence is of a less serious nature, having regard to Home Office Circular 18/1994 and other relevant guidance.

A7.3 Formal cautions must be issued by the appropriately authorised officer in accordance with procedures drawn up for this purpose.

A7.4 When a person declines the offer of a formal caution, it will be necessary to consider taking alternative enforcement action. In the vast majority of cases this will mean a prosecution.

A8. **PROSECUTION AND INJUNCTIVE ACTION**

A8.1 Prosecution will in general be restricted to those persons whose action (or lack of action) presents a significant risk to the community, including blatantly disregarding the law, or refusing to achieve basic minimum legal requirements. It will not be used as a punitive response to minor breaches of legislation.

A8.2 The decision to prosecute or any other formal action is taken by an appropriate authorised officer and takes into account:

A8.3 Circumstances in which prosecution is likely include:
• a particular transgression has resulted in significant community or individual threat or actual harm,

• When the alleged offence involves a flagrant breach of the law.

• Where breaking the law gives an unfair financial or commercial advantage,

• When the alleged offence involves a failure to correct an identified significant; whether by advice, notice or other notification.

• If there is a history of similar offences.

• Officers have been intentionally obstructed in the lawful course of their duties.

• Where there is a realistic chance of securing a conviction – including; evidence, statutory defences and the chances of locating the suspect.

• If, having regard to the Code for Crown Prosecutors, it is in the public’s interest to prosecute.(this is an overarching requirement prior to prosecution).

• Where prosecution is the only practical means to ensure future compliance.