

ARMAGH BANBRIDGE CRAIGAVON DISTRICT COUNCIL

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AMENDMENT RECORD SHEET

Remove and destroy old pages. Insert new pages as indicated.

Revision Number	Page Number	Date Revised	Description of Revision

1.0 INTRODUCTION

This document sets out what business and others can expect from Council regulatory services. We are committed to good enforcement policies and procedures. Authorised Officers will have due regard to any relevant legislation, formal procedures, mandatory guidance and codes of practice made under such legislation and will be guided in their work by the principles laid down in legislation and underpinning this policy.

The services covered by this policy are set out in **Appendix 1**. Where necessary specific enforcement guidelines, procedures and documentation has been and will continue to be developed to support authorised officers making enforcement decisions and to ensure compliance with all statutory codes of practice and official guidelines.

1.1 What we mean by ‘Regulatory’ and ‘Enforcement’

Although these terms are not specifically defined in legislation:

- ‘Regulatory’ encompasses the Council’s numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
- ‘Enforcement’ includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any license, consent or similar formal permission, the issue of fixed penalty notices, the giving of Cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.

2.0 PURPOSE

The purpose of this policy is to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation.

Our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance.

This Policy has been developed with due regard to the Principles of Good Enforcement set out in the following guiding documents:

- The Enforcement Concordat (March 1998)
- The Regulators Code (July 2013)
- The Code for Prosecutors revised in 2008 published by the NI Public Prosecution Service

All enforcement activities, including investigations and formal actions, will be conducted in compliance with the Council’s statutory obligations. Council authorised officers will act within the scope of their delegated authority and with due regard to all relevant legislation, such as:

- The Police and Criminal Evidence (NI) Order 1989
- The PACE Order (Amendment) (NI) Order 2007
- The Criminal Procedure and Investigations Act 1996
- The Criminal Justice NI Order 1986
- The Criminal Justice (NI) Order 1988
- The Criminal Justice (Evidence etc.) (NI) Order 1988
- The Criminal Justice (NI) Order 1994
- The Criminal Justice (NI) Order 1996
- The Criminal Justice (NI) Order 2004
- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Criminal Justice and Police Act 2001
- The Legislative and Regulatory Reform Act 2006
- Section 75 of The Northern Ireland Act 1998
- The Data Protection Act 1998 and
- All associated Codes of Practice

In certain circumstances, the Council may derogate from such statutory responsibilities to the extent that is permitted by law and is proportionate. A breach of the statutory responsibilities referred to above will not necessarily result in a decision not to take enforcement action . We will ensure that any decision to depart from relevant policy guidelines will be properly reasoned and based on material evidence.

3.0 SCOPE

The primary function of local government regulatory activity is to protect the public, the environment and groups such as consumers, residents and tenants, workers and businesses. However, it is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that those subject to regulation and those on whose behalf enforcement is carried out are aware of the Council’s policy on enforcement.

4.0 POLICY DETAIL

4.1 Our Enforcement Principles

Although not directly applicable in NI we aim to apply the principles of the Legislative and Regulatory Reform Act 2006 and the Regulators Code as follows:

Regulatory activities should be carried out in a way, which is transparent, accountable, proportionate, targeted and consistent.

The following paragraphs set out how we aim to make this happen in practice.

4.1.1 Transparent

The Council will provide clear information and guidance on general compliance issues, individual compliance failures or any difficulties an individual may experience when trying to comply with the law. The onus does remain with individuals, businesses and organisations to comply with their legal obligations.

4.1.2 Accountable

As a regulator, the Council will be accountable to the public for its actions. If someone is dissatisfied with the level of service provided, the Council welcomes comments on how that can be improved.

4.1.3 Proportionate, Targeted and Risk-based

In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. We will direct resources to those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

4.1.4 Consistent Enforcement

We will carry out our duties in a fair, equitable and consistent manner. While authorised officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we have arrangements in place to promote consistency. We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority Principle and Primary Authority Principle.

4.1.5 Helping Businesses and Others to Compliance – Supporting Economic Progress

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

4.1.6 Adopting Good Enforcement Procedures

Guidance from an authorised officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Such guidance will usually be confirmed in writing.

4.1.7 Working with Other Enforcement Agencies

Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be coordinated with these agencies.

Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this will happen and will do so to ensure that the information is passed to that agency in accordance with the Data Protection Act 1998.

4.1.8 How We Take Enforcement Action

Whenever enforcement officers deal with matters that could constitute a criminal offence, and for which legal proceedings may be taken against an individual and / or a company, such allegations will be properly investigated. Officers have a range of investigatory powers given by law that may be deployed in their investigations.

At the conclusion of an officer's enquiries, a decision will be made as to whether or not it is believed that an offence has in fact been committed, and, if this is the case, whether to deal with the matter informally, or whether to pursue a more formal course of action. There are a

wide range of actions available to the Council in dealing with offences. The table below describes the main types of actions available.

In determining the most appropriate action to take, officers will consider the circumstances of the incident and this policy.

Action available	Explanation	Circumstances
Informal advice	Verbal or written advice identifying non-compliance and remedial measures. No follow up action.	Where the offence is minor and the risk from non-compliance is low.
Informal warnings	Verbal or written warning requiring remedial measures within a defined period of time. Will be followed up to ensure compliance.	Where non-compliance is not posing a serious risk and it is expected, from what is known of the offender, that informal action will achieve compliance.
Enforcement letters	Warning that a recurrence or continuation of an infringement will result in legal action or service of a statutory Notice.	Where non-compliance is not posing a serious risk and it is expected that the offender will achieve compliance, however, the offence itself is significant, recurring or longstanding.
Statutory notices	Where available under specific legislation, usually requires persons to take action or prohibits certain activities. Serving a notice does not preclude prosecution. Failure to comply is often an offence and prosecution will normally follow. Some notices require emergency action.	Offences are significant or consequences of continued non-compliance could be serious.
Fixed penalty notices	Some legislation allows the Council to issue fixed penalty notices where the offender is offered the opportunity to pay the fine and avoid prosecution.	May only be offered where expressly allowed by statute.

Action available	Explanation	Circumstances
Revocation, suspension or variation of permits, approvals and licenses.	Revoking or suspending a licence, approval, or permit is a serious decision will be taken by councillors in accordance with the Council's scheme of delegation.	A licence, permit or approval may be revoked or suspended if any condition attached to the licence be breached or where an activity presents a serious risk.
Works in default	Some legislation allows the Council to carry out works in default and to recover the costs.	Usually where urgent action is required to protect public health, public safety or the environment. The Council will normally seek to recover such costs where appropriate.
Injunctive proceedings	May be sought to require a party to either do a specific act or to refrain from doing a specific act or acts.	This will be considered in instances where the use of other enforcement powers would not be a sufficient remedy, for example where a person repeatedly fails to comply with the law or where there is an imminent risk to public health or public safety.
Anti-Social Behaviour Order (ASBO)	The Council can apply to the Magistrates Court for an Antisocial Behaviour Order (ASBO) which will prohibit a person from acting in an anti-social manner or from carrying out an act which contributes to anti-social behaviour.	Where there has been persistent, relatively low level offending or more serious matters that cause harassment, alarm or distress to others. An order is necessary to protect people from that type of behaviour in the future. An ASBO may be sought upon conviction but may also be sought where a person has not been convicted, or even charged, with an offence, provided there is sufficient evidence that an ASBO is necessary.

Action available	Explanation	Circumstances
<p>Prosecution</p>	<p>While the Council will take a graduated approach to enforcement, when circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.</p> <p>All decisions to prosecute will take account of The Public Prosecution Service Code for Prosecutors and shall consider the following before commencing a prosecution:</p> <p>Firstly, whether it is satisfied there is sufficient admissible and relevant evidence that an offence has been committed and that there is a reasonable prospect of conviction.</p> <p>Secondly, if there is sufficient evidence, then whether it is in the public interest to prosecute. This usually depends on the seriousness of the offence and the circumstances of the offender and whether, through the conviction of the offender, others may be deterred from similar failures to comply with the law.</p>	<p>Without prejudice to the generality of the above, the Council will normally prosecute in any of the following circumstances:</p> <p>The breaches have serious consequences for public safety or the environment;</p> <p>Failure to comply with a statutory notice or respond to a request to take remedial action;</p> <p>Failure to pay a fine after receiving a fixed penalty notice;</p> <p>Excessive or persistent breaches of legislation;</p> <p>Obstruction of Council staff in carrying out their statutory duties.</p>

A full copy of the Prosecutors Code of Conduct is available from Public Prosecution Service. Their address is Belfast Chambers, 93 Chichester Street, Belfast, BT1 3JR. The Code is also available on the Public Prosecution Service website (<http://www.ppsni.gov.uk>) or from the Council on request.

4.1.9 Minors

A person under the age of 18 is deemed a minor by the courts and is normally prosecuted in the Youth Court. The Council does not usually prosecute minors and will instead use one of the other enforcement actions detailed in this policy.

However when considering how to deal with an offence, the Council will take into account all relevant factors, including the consequences of the offence. Therefore there may be circumstances in which the Council determines that it is in the public interest to prosecute a minor. Such a decision will only be taken in consultation with legal advisors.

4.1.10 Appeals

The following information will be made available by the Council in relation to appeals against enforcement action

- (i) Officers will advise persons against whom any enforcement action has been taken of their right to make representation to the officer's manager.
- (ii) If the Council serve a notice and the legislation used has a statutory appeal provision, details of that right of appeal and how it should be lodged will be served upon the recipient at the same time as the notice.

4.2 How we implement this Enforcement Policy

4.2.1 Publication

This policy will be made available to all interested parties, including businesses and consumers. It will be published on the council's website and in printed form. It will also be made available in different formats upon request.

4.2.2 Responsibilities

Each Director and Manager of a regulatory service that is covered by this policy will be responsible for its effective implementation throughout the enforcement activities of their team. Every officer within these teams will be responsible for applying it in relation to any enforcement activity covered by this policy.

5.0 RELATED POLICIES

Dog Control Enforcement Policy
Clean Neighbourhoods Enforcement Policy.

6.0 EQUALITY SCREENING FORM (to be attached as an appendix to all policies)

See attached.

7.0 DRAFT EQUALITY IMPACT ASSESSMENT AND OTHER IMPACT ASSESSMENTS

Not applicable.

Service Areas Covered by this Enforcement Policy are:

- Building Control
- Environmental Health
- Licensing
- Tobacco Control
- Animal Welfare
- Planning
- Byelaws & Control Orders

Separate enforcement policies are available for:

- Dog Control
- Clean Neighbourhoods & Environment

Policy Screening Form

Policy Scoping

Policy Title: General Enforcement Policy

Brief Description of Policy (please attach copy if available). Please state if it is a new, existing or amended policy.

This is a general enforcement policy for service areas including:

Building Control

Environmental Health

Licensing

Tobacco Control

Animal Welfare

Planning

Byelaws & Control Orders

Intended aims/outcomes. What is the policy trying to achieve?

The policy is to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation.

Policy Framework

Has the policy been developed in response to statutory requirements, legal advice or on the basis of any other professional advice? Does this affect the discretion available to Council to amend the policy?

The policy sets a general enforcement policy approach for the Council in the service areas listed above. The policy is reflective of a number of relevant guidance documents such as the Regulators Code, Code for Crown prosecutors, etc.

Are any Section 75 categories which might be expected to benefit from the policy? If so, please outline.

No. This policy will have no impact on equality.

Who initiated or wrote the policy? (If Council decision, please state). Who is responsible for implementing the policy?

Who initiated or wrote policy? Environmental Health LRG Group.	Who is responsible for implementation? All relevant service area Directors, Managers and Officers.
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Are there any factors which might contribute to or detract from the implementation of the policy (e.g. financial, legislative, other)?

In certain circumstances, the Council may derogate from such statutory responsibilities to the extent that is permitted by law and is proportionate.

Main stakeholders in relation to the policy

Please list main stakeholders affected by the policy (e.g. staff, service users, other statutory bodies, community or voluntary sector, private sector).

The business community, other statutory bodies, community and voluntary sector, private sector, and the general public.

Are there any other policies with a bearing on this policy? If so, please identify them and how they impact on this policy.

None

Available Evidence

Council should ensure that its screening decisions are informed by relevant data. What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

Section 75 category	Evidence
Religious belief	N/A
Political opinion	N/A
Racial group	N/A
Age	N/A
Marital status	N/A
Sexual orientation	N/A
Men and women generally	N/A
Disability	N/A
Dependants	N/A

Needs, experiences and priorities

Taking into account the information gathered above, what are the different needs, experiences and priorities of each of the following categories in relation to this particular policy/decision?

Section 75 category	Needs, experiences and priorities
Religious belief	N/A
Political opinion	N/A
Racial group	N/A
Age	N/A
Marital status	N/A
Sexual orientation	N/A
Men and women generally	N/A
Disability	N/A
Dependants	N/A

Screening Questions

1. What is the likely impact on equality of opportunity for those affected by this policy for each of the Section 75 categories?

Category	Policy Impact	Level of impact (Major/minor/none)
Religious belief	None	None
Political opinion	None	None
Racial group	None	None
Age	None	None
Marital status	None	None
Sexual orientation	None	None
Men and women generally	None	None
Disability	None	None
Dependents	None	None

2. Are there opportunities to better promote equality of opportunity for people within the Section 75 categories?

Category	If yes, provide details	If no, provide reasons
Religious belief	None	None
Political opinion	None	None
Racial group	None	None
Age	None	None
Marital status	None	None
Sexual orientation	None	None
Men and women generally	None	None
Disability	None	None
Dependents	None	None

3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion, or racial group?

Category	Details of Policy Impact	Level of impact (major/minor/none)
Religious belief	None	None
Political opinion	None	None
Racial group	None	None

4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

Category	If yes, provide details	If no, provide reasons
Religious belief	None	None
Political opinion	None	None
Racial group	None	None

Multiple Identity

Generally speaking, people fall into more than one Section 75 category (for example: disabled minority ethnic people; disabled women; young Protestant men; young lesbian, gay and bisexual people). Provide details of data on the impact of the policy on people with multiple identities. Specify relevant s75 categories concerned.

N/A

Disability Discrimination (NI) Order 2006

Is there an opportunity for the policy to promote positive attitudes towards disabled people?

N/A

Is there an opportunity for the policy to encourage participation by disabled people in public life?

N/A

Screening Decision

A: NO IMPACT IDENTIFIED ON ANY CATEGORY – EQIA UNNECESSARY

Please identify reasons for this below

This is a technical policy which sets out the principles of enforcement and the various statutory codes which will be followed. It has no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

B: MINOR IMPACT IDENTIFIED – EQIA NOT CONSIDERED NECESSARY AS IMPACT CAN BE ELIMINATED OR MITIGATED

Where the impact is likely to be minor, you should consider if the policy can be mitigated or an alternative policy introduced. If so, EQIA may not be considered necessary. You must indicate the reasons for this decision below, together with details of measures to mitigate the adverse impact or the alternative policy proposed.

[Empty box for reasons and mitigation details]

C: MAJOR IMPACT IDENTIFIED – EQIA REQUIRED

If the decision is to conduct an equality impact assessment, please provide details of the reasons.

[Empty box for reasons for EQIA]

Timetabling and Prioritising

If the policy has been screened in for equality impact assessment, please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3 with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	
Social need	
Effect on people's daily lives	

The total rating score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the council in timetabling its EQIAs.

Is the policy affected by timetables established by other relevant public authorities? If yes, please give details.

Monitoring

Effective monitoring will help the authority identify any future adverse impact arising from the policy. It is recommended that where a policy has been amended or an alternative policy introduced to mitigate adverse impact, monitoring be undertaken on a broader basis to identify any impact (positive or adverse).

Further information on monitoring is available in the Equality Commission's guidance on monitoring

Identify how the impact of the policy is to be monitored

Approval and Authorisation

A copy of the screening form for each policy screened should be signed off by the senior manager responsible for that policy. The screening recommendation should be reported to the relevant Committee/Council when the policy is submitted for approval.

Screened by	Position/Job title	Date
Martina McNulty Gillian Topping	Group Chief EHO, SGEHC Head off EH, Banbridge DC	14 th November 2014
Approved by	Position/Job Title	Date
Roger Wilson	Chief Executive	14 th November 2014

Please forward a copy of the completed form with policy attached to XXX Officer who will ensure that screening forms and policies are available on the Council website.

This officer is also responsible for issuing reports on a quarterly basis on those policies “screened out for EQIA”. This allows stakeholders who disagree with this recommendation to submit their views. In the event of any stakeholder disagreeing with the decision to screen out any policy, the screening exercise will be reviewed.