South Tyneside Council

item 7

Report to Council

Cabinet Portfolio/Lead Member: Councillor Jim Foreman, Lead Member for Housing & Community Safety

Report of Stuart Wright, Director of Place Strategy

Subject: Review of Public Protection Enforcement Policies

Date: 5th September 2024

Wards affected:	**All**
Council ambitions:	**Part of strong communities, healthy and well, targeting support to make things fairer.**

Does the report and any appendices contain information which has been identified as confidential or exempt?

☐ **Yes**
State the applicable paragraph number(s) under Schedule 12A Local Government Act 1972:

☒ **No**, this report does not contain information identified as confidential or exempt.

For Executive Decisions only:

Is the decision a Key Decision?	☐ **Yes**	☒ **No**
Is it included in the Forward Plan?	☒ **Yes**	☐ **No**
If not in the Forward Plan is the report:	☐ **General Exception Rule** ☐ **Special Urgency Rule**	

Relevant Scrutiny Chair: Councillor Alison Strike

Is the decision eligible for call-in by Scrutiny? ☒ **Yes** ☐
(If the decision is anything other than any executive decision made by the Cabinet or a Key Decision made by an officer under delegated powers, call-in is not applicable. This should be explained in the report.)

Purpose of Report

1. To seek Council approval for an updated General Enforcement Policy for the Council's Public Protection Services and the introduction of several supplementary service-specific enforcement policies, as follows:

    - Enforcement Policy relating to relevant Letting Agency Legislation
    - Control of Dogs Enforcement Policy
    - Air Quality Enforcement Policy
    - Neighbourhood Noise Policy
    - Food and Feed Law Enforcement Policy

Background Information

2. South Tyneside Council's General Statement of Enforcement Policy outlines how the Council will deliver proportionate, accountable, consistent, transparent and targeted enforcement, as required by the Legislative and Regulatory Reform Act 2006.

3. In addition, the Council has adopted the central and local government Concordat on Good Enforcement and in so doing has committed to following policies, procedures and guidance that contribute to improving standards, including *The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement* which advocates:

    - Standards
    - Openness
    - Helpfulness
    - Complaints
    - Proportionality and Consistency

General Enforcement Policy

4. South Tyneside Council's Public Protection Services are responsible for the regulation and enforcement of a wide range of legislation covering a broad spectrum of functions and service areas. An updated Enforcement Policy is required to reflect current regulatory practices for which the Council's Public Protection Services have statutory responsibility.

5. The proposed updated General Enforcement Policy explains the principles aimed at securing compliance and sets out the Council's approach to regulation and enforcement across the following service areas:

    - Commercial Food and Safety
    - Private Sector Housing
    - Environmental Protection

- Environmental Enforcement
- Trading Standards
- Licensing
- Community Safety

6. There is an emphasis on advice and guidance with escalation to informal and formal enforcement sanctions dependent on each individual situation. The policy identifies and explains these sanctions.

Supplementary Policies

Enforcement Policy relating to relevant Letting Agency Legislation

7. This Policy has been developed in response to changing legislation in this area of Trading Standards work. The Policy sets out how the Council will determine the sanction and potential civil penalty in relation to breaches of specific landlord legislation.

8. The Policy reflects the Council's General Statement of Enforcement Policy and is closely aligned to the Council's Private Sector Housing Civil Penalties Policy 2019, to which enforcement officers must have due regard when considering relevant breaches and the imposition of civil penalties.

Control of Dogs Enforcement Policy

9. The management of dog related incidents requires a multi-agency, collaborative approach. This Policy seeks to identify the main legal provisions governing this area of work and sets out how the Council's Environmental Protection and Environmental Enforcement teams will work closely with Northumbria Police and other agencies to deliver effective dog control in South Tyneside.

10. On the 31st October 2023 the Government added the XL Bully breed to the banned breed list, amending the Dangerous Dogs Act 1991. On the 31st December 2023 it became an offence to breed, sell, advertise, rehome, abandon or allow an XL Bully dog to stray.

11. These legislative changes and an increase in anti-social behaviour incidents linked with dogs reported in South Tyneside, have prompted development of this policy.

12. This policy supplements the work carried out under PSPO legislation to promote responsible dog ownership.

Air Quality Enforcement Policy

13. The Air Quality Enforcement Policy has been developed in response to the introduction of the Environment Act 2021 and changes to air quality enforcement. The policy sets out enforcement options and considerations in respect of air pollution offences.

Neighbourhood Noise Policy

14. The Neighbourhood Noise Policy sets out the general approach adopted for the investigation of noise nuisance complaints and the enforcement options available.

Food and Feed Law Enforcement Policy

15. The Food Law Enforcement Policy has been reviewed to ensure that it remains effective. The updated Food and Feed Law Enforcement Policy sets out South Tyneside Council's approach to Food and Feed compliance and enforcement activities with the aim of ensuring comprehensive and consistent enforcement across South Tyneside.

16. The refreshed policy has regard to current law and practice including the Framework Agreement on Official Feed and Food Controls by Local Authorities and the Food Law Code of Practice. The Policy acknowledges the increasing use of civil sanctions including Fixed Penalty Notices and Fixed Monetary Penalties, where these enforcement options are available to discharge offences under new regulations and reduce burden on the criminal courts.

Main issues and Options to be Considered

17. Any regulatory policy aims to set out a clear rationale for application of the policy, providing necessary clarity to both victims and perpetrators, and consistency of approach across the relevant services.

18. The options available to Council are to:

    a) Agree all Policies presented as the Council's approach to enforcement within its Public Protection teams**,** with a review cycle of 3 years.
    b) Agree a number of the presented Policies.
    c) Not agree the new/updated policies.

19. Should any or all of the policies not be agreed, enforcement work will continue but this position would potentially leave the Council open to challenge in respect of 'openness' through lack of up-to-date information and advice about the Council's enforcement approach. The updated General Enforcement Policy and supplementary policies reflect current guidance and best practice and promote consistent decision-making.

20. If approved, a report will be presented to Cabinet at the end of each 3-year cycle, highlighting any required changes to policies, taking account of any changes in structure, legislation, and best practice in the intervening 3-year period.

Implications

21. The implications of this report are set out above and below.

Financial and Resources

22. There are no financial and resources implications associated with this report as the Policies support existing statutory services and enforcement actions will usually be undertaken within existing budgets.

Legal and Governance

23. The preparation and publishing of the General Enforcement Policy is not in itself a legal requirement. However, the Regulators' Compliance Code, issued in accordance with section 22 of the Legislative and Regulatory Reform Act 2006, requires regulators to have regard to this Code. The Code came into effect on 6th April 2014. The adoption of a policy is considered to be best working practice and will assist the Council to demonstrate that it has regard to the Code when carrying out its regulatory and enforcement functions.

24. The Policies presented for approval take account of the most up to date legislation for the specific service area/function and set out the range of tools and powers available.

Risk

25. The most significant risks relate to legal challenge on policy content and on the application of policies.

26. Controls have been identified and implemented to control these risks, including:

- Ensuring policies recognise current legal requirements,
- Ensuring policies take account of current best practice, enforcement guidance, and Council priorities,
- Regular review of policies on a 3-year cycle.

Equality and Diversity and Community

27. The policies take account of responsibilities under the Equality Act 2010 and the Human Rights Act 1998. Equality checks have been carried out on the policies and no risks have been identified. The proposed General Enforcement Policy is consistent with national guidance on regulation and Officers must have due regard to Code C of the Police and Criminal Evidence Act 1984 that protects young and vulnerable persons.

Environmental and Sustainability

28. A number of these policies impact directly on the Local Authority's commitment to environmental improvement and tackling environmental crime. It is recognised that achieving compliance at any cost is not acceptable, however effective regulation promotes economic growth and prosperity and protects individuals, the community, and the environment from harm. Effective regulation can also change behaviours and help to prevent environmental and other crime in the longer-term, creating more sustainable communities in South Tyneside.

Council Ambitions, Policies, Strategies and Plans

29. The proposed enforcement policies directly contribute to the following Council ambitions:

    - Part of strong communities – protecting the public and the environment and preventing crime and disorder as well as maintaining a fair and equitable trading area for all businesses in the borough, will help build strong communities.

    - Healthy and Well – delivery of fair and effective enforcement is an essential aspect of the Council's role in protecting public health.

    The Council's Public Protection Services are also committed to:

    - Targeting support to make things fairer – through a risk-based and intelligence-led approach to enforcement, residents and parts of the borough that need it the most will be supported, reducing inequalities, and making things fairer.

30. The Enforcement Policies will also directly contribute to the following policies, strategies and plans:

    - the Community Safety Partnership action plan,
    - the Serious Violence action plan,
    - the Air Quality Strategy 2023
    - the Anti-social Behaviour Strategy 2024
    - Sustainable South Tyneside Strategy 2020-2025
    - The annual Food and Feed Law Service Plan
    - Work towards the Regulator of Social Housing – Neighbourhood and community Standard

Consultation and Engagement

31. Our Place Scrutiny Committee reviewed the polices on 13th June 2024. While a small number of minor amendments were suggested and adopted in the policies, the Committee were happy with the reports presented progressing to full Council.

32. Amendments included stronger wording regarding responsible dog ownership and signposting safeguarding and other support for residents caught up in enforcement.

33. The enforcement policies are based on applicable legislation and influenced by guidance from National and Government bodies, and best practice which has been closely followed and used extensively in policy development.

34. As appropriate, other regulators, council services and bodies with an interest in specific areas of regulation have contributed to policy development.

Recommendations

35. That Council approves the Policies listed below, attached at Appendices 1-6, and agrees a 3 yearly review cycle for these policies.

    Appendix 1 – General Enforcement Policy

    Appendix 2 – Enforcement Policy relating to Letting Agencies

    Appendix 3 – Dog Control Policy

    Appendix 4 - Air Quality Enforcement Policy

    Appendix 5 - Neighbourhood Noise Policy

    Appendix 6 - Food Law Enforcement Policy

Reasons for Recommendations

36. To ensure the Council's Public Protection teams can continue to work to up-to-date policies that align with current legislation and good operational practice and that comply with the Council's Human Rights, Equality and Safeguarding responsibilities.

37. To ensure a consistent and co-ordinated approach to enforcement across Public Protection and robust justification for enforcement decisions.

38. To support the principle of openness in providing clear information about how the Council's Public Protection teams carry out their work.

background papers background papers background papers

Review of Public Protection Enforcement Policies

The following is a list of the background papers (excluding exempt papers) relied upon in the preparation of the above report:

Background Paper	File Ref:	File Location
Regulatory Enforcement and Sanctions Act 2008		
The Regulators' Code		
The Legislative and Regulatory Reform Act 2006		
Privalte_Sector_Housing_Civil_Penalties_Policy_April_2019_1.pdf (southtyneside.gov.uk)		
Tenancy_Fees_Act_-_Statutory_guidance_for_enforcement_authorities.pdf (publishing.service.gov.uk)		
Mandatory client money protection: enforcement guidance for local authorities - GOV.UK (www.gov.uk)		
Regulator of Social Housing - Neighbourhood and Community Standard		

APPENDIX 1

General Enforcement Policy

Public Protection 2024

South Tyneside Council

Spread the word!

THIS IS SOUTH TYNESIDE

Contents

1.0. Introduction

South Tyneside Council ('the Council') has a duty to enforce a wide range of statutes for regulation of the public protection services it delivers. The purpose of this Enforcement Policy is to establish a consistent approach to enforcement and provide an overarching framework under which the Council's Public Protection Services will carry out their enforcement activity.

Enforcement in the context of this policy includes action carried out in the exercise of statutory enforcement powers and duties. It includes the inspection of premises, the provision of advice as well as formal enforcement including fixed penalty notices, statutory notices, and prosecution.

The primary function of the Council's Public Protection Services is to achieve regulatory compliance to protect the public, legitimate business, the environment, and groups such as consumers, workers, residents, and tenants. To do this the Council will deliver efficient, effective, targeted, and proportionate regulation focussed by risk assessment, with the aim of improving compliance whilst minimising the burden on businesses, individuals, organisations, and the Council.

The Council is committed to good enforcement practice and this Policy has been prepared having regard to relevant legislation, guidance, and codes of practice available at the time of publication. The Policy conforms to the Regulators' Code (Better Regulation Delivery Office (BRDO) April 2014), which provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. Public Protection Services also follow the guidance contained in the Code for Crown Prosecutors, produced by the Crown Prosecution Service and other relevant guidance as it becomes available.

Whilst this policy seeks to explain key themes and general principles of good enforcement practice, members of the public and businesses are advised that detailed service-specific enforcement policies, procedures and arrangements also exist to which the overarching principles of the Regulator's Code and the processes contained within this policy, will also apply.

The Council will ensure that regulatory officers have the necessary knowledge and skills to understand the statutory principles of good regulation and how to deliver activities in accordance with the Code. The Council expects officers taking enforcement decisions to follow this policy as far as reasonably practicable. Any departure from the Policy must be justifiable, documented, and be approved by the appropriate line manager when practicable, which may be after the event.

This Enforcement Policy relates to those enforcement and regulatory functions discharged by Public Protection Services within the Place and Communities Directorate, indicatively made up of the Council's Environmental Health, Environmental Enforcement, Trading Standards, Licensing and Community Safety Services.

This policy reflects the shift in focus of regulatory enforcement actions to ensure they are more targeted, risk based and proportionate and is intended to provide guidance for enforcement officers, businesses, consumers and the public.

2.0. Objectives

Maintaining and developing good enforcement policies and procedures and carrying out enforcement functions in an equitable, practical, and consistent manner, supports the Council's ambitions by providing protection from harm for individuals and the environment, enabling businesses to flourish without unnecessary burden, and supporting residents and those who live in or visit the Borough to remain healthy and well.

The Council is committed to ensuring that its Public Protection Services:

- Communicate policies, powers and procedures to the public,
- Provide advice and guidance,
- Take timely and appropriate action to control, mitigate and seek to prevent serious or persistent breaches of law,
- Keep all parties involved in a complaint informed of any significant developments in investigations,
- Actively liaise with and assist other agencies in a co-ordinated and mutually supportive way to provide the best overall remedy,
- Seek to protect the identity of those making complaints and those complained about and maintain confidentiality for all parties until enforcement proceedings begin.
- Ensure that actions are proportionate and reasonable and do not infringe upon the rights of others who may be the target of malicious or unfounded complaints,
- Act in a fair and impartial manner, ensuring that policies serve all parties fairly,
- enforce the law in a non-discriminatory manner,
- Ensure transparency and accountability through the proper recording of all actions and decisions,
- Maintain the Health and Safety of enforcement officers.

3.0. Enforcement Approach and Legal Controls

The Council recognises that prevention is better than enforcement. The Council supports the judicious use of statutory powers as an effective means of ensuring that businesses and individuals, local premises, practices, and activities comply with statutory requirements and do not put the economic wellbeing, health and safety or amenity of the general public, employees, other businesses, or consumers at risk. The Council's Public Protection services will assist and advise wherever possible but will also take firm action against those who act irresponsibly or flout the law.

Each decision to use enforcement action will be taken on a case-by-case basis and will be in accordance with this Enforcement Policy and any other relevant policies. This Policy does not compel the Council to take enforcement, but when it is taken, it will be proportionate to the severity and nature of non-compliance. Although the approach is intended to be graduated this will depend on the nature and seriousness of the incident or offence and formal measures may be taken immediately without warning if warranted.

In their approach to enforcement, the Council's Public Protection Services will aim to:

(a) Change an offender's behaviour
(b) Facilitate societal change in respect of offences which may not be serious in themselves, but which are widespread
(c) "Level the playing field" to support legitimate businesses
(d) Consider what is appropriate for the offender and the regulatory issue
(e) Be proportionate
(f) Restore the harm caused where appropriate
(g) Deter future non-compliance
(h) Comply with statutory requirements.

When planning to take Enforcement Action the decision will be impartial and will not be influenced by ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness, or offender. Furthermore, such decisions will not be influenced by improper or undue pressure from any source.

Where practicable, enforcement officers will take into account the views of any victim, injured party, or relevant person to establish the nature and extent of any harm or loss, and its significance in making the decision to take formal action. This may include actual or potential harm or loss, or the impact on the wellbeing of individuals, or potential or actual harm to communities or the environment.

As required Officers will refer those involved to the relevant support services. It should be recognised that this may include victim support, safeguarding referral and potential welfare/financial support.

Support for victims and witnesses of crime
Safeguarding
Financial support

Where possible those regulated can seek advice from the relevant service about potential non-compliance without automatically triggering enforcement action. Each matter will be considered on a case-by-case basis, having regard to this policy and the merits of the particular case.

All enforcement activities, including investigations and formal actions, carried out by individual officers, will be commensurate with their authorisation and conducted in accordance with relevant statutory legislation, including but not limited to:

- The Statutory Regulators' Code
- The Police and Criminal Evidence Act 1984
- The Criminal Procedure and Investigations Act 1996
- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000

- The Criminal Justice and Police Act 2001
- The Food Law Code of Practice (England) 2015
- Powers of Entry Code of Practice 2014

and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities.

South Tyneside Council is a public authority for the purposes of the Human Rights Act 1998 and therefore the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms will be applied.

Authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Where there is a legal basis to do so, services will look to recover costs and make reasonable charges for the time and effort spent on investigating and taking enforcement action.

Monitoring, Planned Inspections and Surveillance

Monitoring the borough is an important routine and, in some instances, a statutory activity to check for compliance and identify issues that may require intervention by our Public Protection teams.

Proactive inspections will be guided by relevant guidance, local and national priorities and Central Government agency requirements. Services will have close regard to relevant codes of practice, statutory guidance and advice issued by them.

Where surveillance is necessary, it will be undertaken strictly in accordance with the Council's RIPA Covert Surveillance Policy.

The powers used by authorised officers are determined and restricted to those set out in the appropriate statute and/or the Council's Scheme of Delegations.

Should any officer conducting regulatory or enforcement activities be obstructed in the course of their investigations, then formal action will be considered where legislation allows.

Where legislation allows the seizure of equipment, articles or items, the Council will adhere to legislation, guidance, and specific policies in relation to those seizures (e.g. the Neighbourhood Noise Policy).

Where necessary, the Council and its officers may request that Northumbria Police exercise their powers of arrest in order to progress an investigation and/or apprehend an offender.

Legislation used by regulatory and enforcement officers is often subject to statutory time limits for investigations from the point of discovery or commission of the offence.

In all circumstances the Council will abide by these limitations when conducting investigations and when considering any subsequent enforcement actions.

Before information is laid at Court, the case file, casework, and all relevant evidence are subject to case review through line management arrangements prior to authorisation at Operations Manager/ Service Lead level and above.

From time to time the Council will seek to publish enforcement results to raise awareness and encourage compliance. Where appropriate, results of specific court cases may also be published or shared by South Tyneside Council.

4.0. Policy Scope

Enforcement Action within the scope of this policy includes:

(a) Action to secure compliance with a restriction, requirement, or condition in relation to a breach or supposed breach
(b) Action taken in connection with imposing a sanction for an act or omission; and
(c) Action taken in connection with a statutory remedy for an act or omission.

This Policy, where appropriate, applies to the legislation delegated to Public Protection Services and enforced by authorised officers with delegated powers listed in Part C of the Council's Constitution 'Responsibility for Functions'.

Where offences or potential offences are suspected that are outside the legislative remit of this General Enforcement Policy, officers will refer the matter to the relevant agency (including other council services).

When considering action, the Service will, where appropriate and reasonably practicable, discuss the circumstances with those suspected of a breach and take these discussions into account when deciding on the best approach.

There are, however, a number of offences where the process is dictated by statute or where immediate action is required, or where to inform those suspected of a breach would defeat the purpose of the legislation.

Where businesses have a registered Primary Authority Partnership, Services will, as required, comply with the agreement provisions, and notify the Primary Authority of the proposed enforcement action.

5.0. Scheme of Delegation – Authorisation of Officers

The Council's Constitution sets out arrangements for delegation of functions including responsibility for enforcement activity.

The level of enforcement that Officers are authorised to undertake is dependent on a period of assessment, qualification training and or experience to fulfil the role.

When conducting enforcement visits, Officers will make their identity known, and when it is requested, show the written authorisation issued to them.

6.0. Enforcement Procedure and Options

Where information or intelligence comes to light which may lead to formal enforcement action against a business or individual, then the relevant Service will notify that business or individual as soon as practicable of any intended enforcement action, unless this could harm any subsequent investigation or present a safety risk to those concerned, or the public.

As far as possible, interested parties including the alleged offender, victim, and witnesses etc will be kept informed of progress concerning parts of the investigation relevant to them. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018.

Enforcement options include the use of civil and criminal sanctions and there are many generic tools available to enforcement teams, including;

Prevention
Preventing contravention of the law by raising awareness and promoting good practice is a key aim. Public Protection Services will pursue a number of methods to achieve this aim including advice, issuing press releases, tweets, alerts, the production of webpages and other forms of written guidance, and opportunities presented by day-to-day contact with businesses and other customers.

No Action
Enforcement Officers may consider that no action is appropriate in some circumstances, such as in the event of a minor breach and where there is no impact on public safety or environmental damage or where the offender is vulnerable and enforcement action would seriously harm their wellbeing.

Informal Action and Advice
For minor breaches of the law verbal or written advice may be issued as a first response, sometimes in the form of a warning letter. This advice will clearly distinguish between good practice and legal requirement and will set out what should be done to rectify the breach and prevent re-occurence. The Council will reserve the right to pursue further action if required.

Financial Penalties (Fixed Penalty Notices (FPN) / Penalty Charge Notices and Monetary Penalties)
The government is introducing an increasing number of offences for which fixed penalty notices, penalty charge notices and monetary penalties can be issued. A FPN, penalty charge notice or monetary penalty is not a criminal fine, and does not appear on an individual’s criminal record, however, if not paid the Council may commence criminal proceedings or take other enforcement action in respect of the breach or take civil enforcement action to recover the value of the fixed penalty, penalty charge or monetary penalty subject to the provisions of the relevant legislation.

If a fixed penalty, penalty charge or monetary penalty is paid in respect of a breach, the Council will not take any further enforcement action in respect of that breach. Payment of the penalty does not provide immunity from prosecution in respect of similar, continuing, or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. They can only be used where an officer believes that an offence has been committed and there is sufficient evidence to support a prosecution. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

In specific instances dictated by regulation, the Council has powers to issue monetary penalties and in some cases the Council has discretion in the level of monetary penalty to impose. Where regulation makes provision for the Council to receive representations in respect of a charge, the Council will inform recipients how to make representation and provide guidance on what might be relevant issues. Any representation received will be reviewed in a timely manner within the terms of the regulation, the requirements of this policy and based on the reasonableness of the charge on a case-by-case basis.

If the Council deems fit it may confirm, vary, or quash a monetary penalty.

Where an order under Part 3 (civil sanctions) Regulatory Enforcement and Sanctions Act 2008 is made by statutory instrument and regulators have powers to impose civil sanctions, the regulator must publish guidance as to its use and enforcement of those sanctions. Depending on the legislation, civil sanctions can include Fixed Monetary Penalties, discretionary requirements, Stop Notices or Enforcement Undertakings.

Fixed Penalty Notices - Juveniles

In law fixed penalty notices can be issued to anyone over the age of ten. Where there is cause to take enforcement action against a juvenile the Local Authority must ensure they are acting in accordance with the Children Act 2004 and related guidance, having regard to the need to safeguard and uphold the welfare of children.

As a consequence, South Tyneside Council will not issue fixed penalty notices to any person under the age of 18 unless there are exceptional circumstances such as persistent offending. Where this is the case the enforcement officer will engage/liaise with Family Help and Adolescent Services at the earliest opportunity to discuss the most appropriate course of action in respect of the offender.

Formal Notice

Certain legislation allows notices to be served requiring specific action to be taken or stopped. Some Notices will require immediate action while others may allow time to comply. Details of what needs to be done and by when will be clear on the Notice as will the implications of non-compliance and the appeal period for the particular notice if there is one.

Forfeiture Proceedings
This may be used at the same time as seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market. The Council will, where necessary, make an application for forfeiture to the Magistrates' Court.

Seizure
In certain circumstances authorised officers may seize goods, equipment or documents, or any goods used in the commission of an offence or that may be required as evidence for possible future court proceedings.

Refusal, Suspension and Revocation of Licences / Authorisations
The Council issues a number of licences and permits. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run, and public safety is assured. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account and also other matters which, on the balance of probability, may influence the assessment of a person to be a fit and proper person.

In circumstances where there has been a serious contravention of legislation, the Council may consider using its powers to suspend/revoke licences as well as taking other enforcement action.

Where possible and appropriate licence holders will be given early warning of any concerns about problems identified at premises and of the need for improvement.

Injunctive Actions and Other Civil Sanctions
In certain circumstances injunctive action may be the most appropriate course of enforcement and where appropriate such actions may be used to deal with offenders, dangerous circumstances, or wider detriment.

Civil Penalties
Civil Penalties are available as an alternative to prosecution for a range of offences under the Housing Act 2004, and where a landlord or property agent has breached a banning order under the Housing and Planning Act 2016.

Officers must prepare cases to the same burden of proof as in prosecution cases and can award penalties of up to £30,000 in accordance with specific matrices contained within South Tyneside Council's Private Housing Civil Penalties Policy 2019.

Powers under the Anti-social Behaviour, Crime and Policing Act 2014

- **Community Protection Warnings (CPWs), Community Protection Notices (CPN's) or Criminal Behaviour Orders (CBO's)** can be used to deal with a wide range of ongoing anti-social behaviour issues or nuisances which are having a detrimental effect on the community's quality of life. CPNs or Warnings will be issued to ask an offender to stop doing or to carry out a certain activity immediately, or within a certain time scale. Details of the appeals process are provided in the Notice. Breach of a Notice may result in a FPN, Prosecution, Works in Default, or other appropriate action.

- **Public Spaces Protection Orders (PSPOs)** are used, following consultation, to prohibit certain activities within identified public places or to require that specified things be done by persons carrying on specified activities in that area.

  Orders can be introduced if:
  (i) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality;
  and
  (ii) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
  Breach of a PSPO without a reasonable excuse is an offence. Details of current PSPO's active in South Tyneside can be found on the Councils website PSPOs in South Tyneside

Simple Caution
If a prosecution would otherwise be justified, a Simple Caution may be offered as an alternative. Simple Cautions will be used in accordance with current guidance from the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984. A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For a Simple Caution to be issued a number of criteria must be satisfied:

(a) Sufficient evidence must be available to prove the case
(b) The offender must admit the offence
(c) It must be in the public interest to use a Simple Caution
(d) The offender must be 18 years of age or over.

In determining whether it is appropriate to issue a Simple Caution consideration will also be given to whether the offender has received a simple caution within the last 2 years. If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

The refusal of an offender to be cautioned does prejudice a prosecution.

Prosecution
Where no other enforcement action is considered appropriate or a defendant has failed to comply with a notice or to pay a fixed penalty notice issued to them, a prosecution will be considered. In doing so, Public Protection teams will apply the *Code for Crown Prosecutors* issued by the Crown Prosecution Service and Director of Public Prosecutions.

This Code sets out the general principles to be applied when making decisions about prosecutions. The Code sets out two stages: (i) the evidential stage; followed by (ii) the public interest stage. The evidential test will be considered before the public interest test.

Cases may be discontinued where it is obvious that the public interest test is not met, notwithstanding the evidential burden.

Proceeds of Crime Act Applications
The Council may in appropriate circumstances make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

Specific legislation may allow different action to be taken, which will be detailed in service-specific policies. The order in which the enforcement options are listed above does not necessarily represent escalating seriousness relative to each other. The Council will consider whether the proposed action is necessary and proportionate and reserves the right to escalate any level of enforcement action. The following matters will also be considered:

(a) The seriousness of the compliance failure
(b) The history and current performance of any business and/or individual concerned
(c) Any obstruction or attempted obstruction on the part of the offender
(d) Statutory guidance, Codes of Practice, or specific Enforcement Policy, procedures
(e) Any legal advice, policies and priorities of Government, South Tyneside Council, or its partners
(f) A person's age in relation to young people aged under 18 (termed 'juveniles')
(g) A Primary Authority agreement
(h) Any duty of South Tyneside Council or statutory provisions?

A more serious Enforcement Action is likely to be considered if:

(a) The victim is vulnerable
(b) There has been an obstruction of an officer
(c) Offences involve deception, fraud or negligence
(d) There is blatant or continuing disregard for the law
(e) There is risk to public health /safety
(f) There is public nuisance
(g) There are offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine public/business confidence in the Borough

7.0 Decisions on Enforcement Action

Decisions about the most appropriate enforcement action are taken having due regard to this policy and may involve consultation between:

(a) Investigating Officer(s)
(b) Senior managers
(c) The Council's Legal team.

The decision to prosecute a case will be taken by those with authority to do so under the Scheme of Delegations set out in the Council's Constitution.

All enforcement decisions made by officers will be documented and maintained in accordance with the Local Authority's retention policies.

Where the law permits, officers will carry out enforcement in council run premises in a manner consistent with any other business. Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Corporate Leadership Team without delay.

8.0 Powers of Entry

The Council is provided with specific powers of entry that is specific to the legislation to be enforced.

Authorised officers exercising a power of entry will have regard to the Powers of Entry: Code of Practice - GOV.UK (www.gov.uk), unless the exercise of that power is subject to another statutory code of practice which will take precedence.

9.0 Partner Involvement

In addition to the duties imposed by the Regulatory Enforcement and Sanctions Act 2008 in respect of cooperating and working with Primary Authorities and RD ???, the Council's Public Protection services will, where appropriate, co-operate and co-ordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the boundaries of South Tyneside or involves enforcement by one or more other local authorities or organisations, then where appropriate, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

Public Protection Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

(a) Government Agencies.
(b) Police Forces.
(c) Fire Authorities.
(d) Statutory Undertakers.
(e) Other Local Authorities.
(f) Other internal Council Departments

6.0. Complaints

All complaints about the Public Protection services provided by the Council will be dealt with in accordance with the Council's formal complaints procedure. Complaints can be logged via the following methods:

- Online using the Complaints form
- In person at South Shields Town Hall (Customer Service Centre) or Jarrow Town Hall (Customer Service Centre)
- By telephone on **0191 427 7000**
- By letter to South Tyneside Council, Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL

The Council's Customer Advocates Service can also provide assistance with complaints. They can be contacted on **0191 424 6028** or by emailing complaints@southtyneside.gov.uk.

See South Tyneside Council Complaints Policy for further information

Where there is a right to appeal, enforcement actions may be appealed to South Tyneside Council or the appropriate Court. Offenders will be provided with the appropriate details at the time enforcement action is taken.

In most situations law enforcement investigations fall under the requirements of the Police and Criminal Evidence Act 1984 (PACE). This imposes requirements on the circumstances in which the council can engage with a person who is suspected of committing an offence or who is the subject of current/pending law enforcement action. The Corporate Complaints Procedure cannot be used to attempt to override or circumvent PACE and any corporate complaint may be suspended pending the completion of legal action.

Tenant Fees Act 2019

Consumer Rights Act 2015

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, made under the Housing and Planning Act 2016

Introduction and Overview

South Tyneside Council has adopted the following policy and process for deciding on a financial penalty amount and determining when it is appropriate to prosecute as an alternative to making a financial penalty.

It applies in relation to any decision made by the Council in its capacity as Enforcement Authority under Section 6 of the Tenant Fees Act 2019.

For clarity, “relevant letting agency legislation” means: -

1. The Tenant Fees Act 2019, “the TFA 2019”
2. Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to dwelling houses in England
3. An order under Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013[1]; and
4. Regulations under Sections 133 – 135 of the Housing and Planning Act 2016[2]

Policy Statement

The policy is designed to ensure transparency, consistency and fairness in the manner in which civil penalties are imposed. It will help ensure that the Council’s use of civil penalties is appropriate and proportionate, creating a level playing field for all letting agents and landlords.

Civil penalties will act as a powerful deterrent for those letting agents and landlords who may otherwise consider that the financial benefits of non-compliance outweigh the risk of enforcement action against them. The power to impose civil penalties will encourage letting agents to reconsider poor practices which in turn will lead to greater levels of compliance and fairness for South Tyneside’s private rented sector.

---

1 Pertaining to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

2 Pertaining to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

1. Sanctions

The Tenant Fees Act (TFA 2019) provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

a) In respect of a first breach of sections 1& 2 or a breach of Schedule 2 of the TFA, a financial penalty not exceeding £5,000.

b) Under s 12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the Consumer Rights Act 2015 a financial penalty not exceeding £5,000.

In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3, Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5, (in respect of property management work) to a financial penalty not exceeding £5,000. (Note that it is not sufficient to simply register for redress – the correct category of membership must be obtained depending on the work carried out.)

In respect of Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019: -

a) a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection ("CMP 2019") Scheme as required by Regulation 3, a financial penalty not exceeding £30,000 or

b) a failure to display a certificate of membership; or publish a copy of that certificate on the relevant website (where one exists); or produce a copy of the certificate free of charge to any person reasonably requiring it as required; or notify any client in writing within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP 2019 scheme has been revoked, as required by Regulation 4, a financial penalty not exceeding £5,000.

The Council will determine what is the most appropriate and effective sanction and whether it is appropriate to impose a financial penalty or prosecute having due regard to South Tyneside Councils General Statement of Enforcement Policy and as the Enforcement Authority, the South Tyneside Council, Private Sector Housing Civil Penalties Policy. Private_Sector_Housing_Civil_Penalties_Policy_April_2019_1.pdf (southtyneside.gov.uk)

Other Types of Enforcement Action that may be taken:

In appropriate circumstances consideration will be given to informal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the relevant South Tyneside Councils General Statement of Enforcement Policy.

2. Statutory Guidance

The Ministry of Housing, Communities & Local Government ("MHCLG") has published guidance for enforcement authorities in respect of the Tenant Fees Act 2019 –

Tenancy_Fees_Act_-_Statutory_guidance_for_enforcement_authorities.pdf (publishing.service.gov.uk)

and in respect of Client Money Protection Requirements –

Mandatory client money protection: enforcement guidance for local authorities - GOV.UK (www.gov.uk)

This is statutory guidance to which the Council must have regard to when considering to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should consider when deciding on the level of financial penalty to impose and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

3. Determining the level of the financial penalty

In accordance with the provisions of the TFA 2019 & CMP 2019 statutory guidance, the following factors will be considered by the Council when determining the level of penalty to impose for a breach of relevant letting agency legislation:

a) The severity of the breach
b) Punishment of the landlord or agent
c) Aggravating and mitigating factors
d) Fairness and proportionality

Each of these factors are explained in more detail in the statutory guidance which will be referred to for each penalty. For ease, the same considerations will be applied in cases of redress membership and breaches of Section 83 of the Consumer Rights Act 2015.

Although the Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when making this policy.

The Council has also decided to base this policy on the principles set out in South Tyneside Councils 'Private Sector Housing, Civil Penalties Policy April 2019 with the recognition that with exception of the limited power to prosecute referred to in this policy, prosecution is not otherwise an option under the TFA 2019.

Appendix 1 of this policy contains the processes that the Council will use to determine the level of financial penalty under the TFA 2019 and other relevant letting agency legislation. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and suspension of the process should an appeal be made to the First Tier Tribunal.

Appendix 1 The Council's process for determining the level of penalty to set:

STEP ONE – Determining the offence category

The Council will determine the breach category using only the culpability and category of harm factors below. Where a breach does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. The Council may also apply a discretionary factor in order to reflect consistency and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

Culpability

Very high: Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile[3] and knew their actions were unlawful

High: Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken

Medium: Breach committed through act or omission which a person exercising reasonable care would not commit

Low: Breach committed with little fault, for example, because:

a) significant efforts were made to address the risk although they were inadequate on
b) the relevant occasion
c) there was no warning/circumstance indicating a risk
d) failings were minor and occurred as an isolated incident

Harm
The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm requires consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – **High Likelihood of Harm**

a) Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business
b) High risk of an adverse effect on individual(s) – including where persons are vulnerable[4].

3 Which may include any significant role in a trade or business representative organisation

4 A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.

Category 2 – Medium Likelihood of Harm

a) Adverse effect on individual(s) (not amounting to Category 1)
b) Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
c) Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
d) The Council's work as a regulator is inhibited
e) Tenant or prospective tenant misled

Category 3- **Low Likelihood of Harm**

a) Low risk of an adverse effect on actual or prospective tenants.
b) Public misled but little or no risk of actual adverse effect on individual(s)

We will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.

In some cases no actual harm may have resulted and enforcement authority will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

To the community

Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

STEP TWO - Starting point and category range

Having determined the category that the breach falls into, the Council will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The Council will then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

The statutory guidance advises that local authorities should use their powers under Schedule 5 to the CRA 2015 to, as far as possible, assess a Landlord's or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Council such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

Starting points and ranges

The tables in Appendices 4-9 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach.

a) Appendix 4 First breach in respect of a Prohibited Payment
b) Appendix 5 Second & subsequent breach in respect of a Prohibited Payment
c) Appendix 6 Breach of Publication of Fees requirements
d) Appendix 7 Breach in respect of membership of a Redress Scheme
e) Appendix 8 Breach in respect of membership of a Client Money Protection Scheme

f) Appendix 9 Breach of transparency requirements in respect of a Client Money Protection Scheme (Regulation 4)

Context

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions[5] are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

- Previous breaches of the TFA 2019 or relevant letting agency legislation.
- Previous convictions, having regard to:
  - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
  - the time that has elapsed since the conviction:

Other aggravating factors may include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of the investigation
- Record of poor compliance
- Refusal of advice or training or to become a member of an accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous or no relevant/recent breaches
- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of relationship with tenants
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct

---

5 See Appendix 3 for a list of relevant convictions

- Mental disorder or learning disability, where linked to the commission of the breach
- Serious medical conditions requiring urgent, intensive, or long- term treatment and supported by medical evidence

STEP THREE - General principles to consider in setting a penalty

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence, and the Council must consider the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, The Council will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in STEP EIGHT below.

STEP FOUR- Issue Notice of Intent

In respect of prohibited payments, publication of fees etc and client money protection membership and transparency requirements the Council will issue a Notice of Intent before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the breach. In respect of redress membership, the notice of intent must be served within 6 months of the date on which the enforcement authority is first satisfied of the failure to comply with Article 3 or Article 5. If the breach is ongoing the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the Statutory requirements according to which breach is being addressed a Notice of Intent will contain the amount of the proposed penalty, the reason for imposing the penalty and information about the right to make representations concerning the penalty. In respect of the TFA 2019, the date of service is also required on the Notice of Intent.

STEP FIVE – Consideration of representations and review of financial penalty where appropriate

The Council should review the penalty and if necessary, adjust the initial amount reached at STEP FOUR, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.

Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two, providing it doesn't increase the penalty over the prescribed maximum. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP SIX – Reductions

The Council will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties, such as (but not limited to):

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate
- The impact of the financial penalty on employment of staff, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender accepted liability
- The circumstances in which they admitted liability
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the breach itself.

STEP SEVEN - Additional actions

In all cases the Council must consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

STEP EIGHT – Totality of breaching conduct

Where more than one financial penalty has been considered, the Council should consider the following guidance from the Sentencing Council's definitive guideline on 'Offences Taken into Consideration and Totality' which appears to the Council to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative the Council should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to the Council.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate total financial penalty. There are a number of ways in which this can be achieved.

For example:
Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for

that breach. No separate penalty should be imposed for the other breaches. Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The Council should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are imposed, the Council must take care to ensure that there is no double-counting.

STEP NINE – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix 2 – Non exhaustive list of vulnerable people

- Young adults and children
- Persons vulnerable by virtue of age
- Persons vulnerable by virtue of disability or sensory impairment
- People on a low income
- Persons with a Drug or alcohol addiction
- Victims of domestic abuse
- Children in care or otherwise vulnerable by virtue of age
- People with complex health conditions
- People exploited where English is not their first language.
- Victims of Trafficking or sexual exploitation
- Refugees
- Asylum seekers
- People at risk of harassment or eviction People at risk of homelessness.

Appendix 3 – Non exhaustive list of relevant offences /breaches

Housing law or landlord and tenant related:

Offences under:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004
- The Consumer Protection from Unfair Trading Regulations 2008

Offences involving fraud:

Offences in which the victim has been deprived of money, property, or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

Offences involving violence:

- A conviction for the offence of:
- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

Offences involving drugs:

- Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agents business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition where an offence of possession with intent to supply is involved regard should be had to the role and importance of, the subject in the supply chain

Offences involving sexual offences

- An offence contained in schedule 3 of the Sexual Offences Act 2003.

Unlawful discrimination

- Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

Other offences

- Modern Slavery/ Human Trafficking Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

APPENDIX 4 – Financial Penalty in the case of a first breach in respect of Prohibited Payments

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

APPENDIX 5 – Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach:

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

APPENDIX 6 – Financial Penalty in the case of a breach in respect of the publication of Fees

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 7 – Financial Penalty in the case of a breach in respect of Membership of a Redress Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

APPENDIX 8 – Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

APPENDIX 9 – Financial Penalty in respect of a breach of transparency requirements of membership of a Client Money Protection Scheme (Regulation 4).

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

APPENDIX 3

Control of Dogs Enforcement Policy

Public Protection 2024

South Tyneside Council

Spread the word! THIS IS SOUTH TYNESIDE

Contents

1.0. Introduction

This Policy sets out the scope of South Tyneside Council's (the Council) operations in relation to issues of dog control and how the Council will work with partners and other stakeholders to address the issue of dog control and encourage responsible dog ownership. The Policy covers a number of (areas) including anti-social behaviour involving dogs, public spaces protection orders (dogs on leads/ numbers of dogs walked/ dog fouling etc.) stray dogs, microchipping, dog breeding and animal welfare.

The Council's over-arching Public Protection Enforcement Policy governs the general approach to enforcement in all areas of work of the Council's Public Protection Services and as such should be read in conjunction with this Policy document.

Managing dog related incidents requires collaborative joint working between enforcement officers within South Tyneside Council, and the Police and any other stakeholders where relevant i.e. RSPCA. There is an agreed understanding of areas of responsibility for all stakeholders and a joint approach whereby South Tyneside Council, Northumbria Police and other agencies work closely together to address dog related incidents is a useful tool to prevent incidents with dogs escalating.
It is recognised that dog related incidents can vary in severity.

This Policy document will aim to signpost residents and visitors to the most appropriate agency depending on the nature and severity of the incident.

2.0. Aim and Objectives

The aim of this Policy document is to outline the requirements of dog owners to ensure responsible dog ownership and to set out the enforcement options available to reduce the potential for any danger, distress or nuisance that may be caused by dogs. This aim will be met by fulfilling the following objectives:

- Communicate our dog control policies, powers and procedures to the public;
- Establish a coherent and effective working relationship between relevant agencies to ensure dog incidents are referred to the appropriate agency for investigation and potential enforcement action;
- Keep all parties involved in a complaint informed of any significant developments in our investigations;
- ensure that our actions are proportionate and reasonable and do not infringe the rights of others who may be the target of malicious or unfounded complaints.
- act in a fair and impartial manner, ensuring that our policies serve all parties fairly and enforce the law in a non-discriminatory manner;
- ensure that all our actions and decision-making is properly recorded and transparent and that we are accountable for our decisions;
- maintain the Health and Safety of our officers;

3.0. Tackling Anti-Social Behaviour Incidents Involving Dogs

The primary piece of legislation for dealing with banned dog breeds and dogs dangerously out of control is the Dangerous Dogs Act 1991 (DDA 1991).

Banned breeds

As is the case with current breed types that are prohibited, the police are the lead enforcement agency and will investigate for offences under Section 1 of the Dangerous Dogs Act (DDA) 1991. This includes formally typing suspected XL Bully breed types from 31st December 2023 following the application of Section 1(2) offences under the DDA 1991 to the XL Bully type. Please refer to Government guidance for further advice.

Dogs dangerously out of control

If any dog is dangerously out of control in any place, including on private property, the owner or person for the time being in charge of the dog, is guilty of a summary offence. That offence becomes an aggravated offence, and triable either way, if the dog injures any **person** or an **assistance dog** while out of control.

DDA 1991 is primarily enforced by the Police. All reports relating to dogs dangerously out of control should be referred to the Police for investigation and potential enforcement. Council officers are not authorised under the DDA 1991.

The Dogs Act 1871 allows a complaint to be made to the Magistrates' Court that a dog is dangerous. This is a civil (not criminal) complaint, although heard at a Magistrates Court; it therefore operates on a lower standard of proof i.e., on the balance of probabilities. Civil proceedings, commenced by way of complaint, can be taken by the police, local authority, or individual members of the public.

Proceedings are taken against the dog's owner (as opposed to someone in charge of the dog at the time). If it appears to the court that the dog is dangerous, the court may make an order directing the dog be kept under proper control by the owner or destroyed.

Magistrates can make an order in any circumstances where they find a dog to be dangerous; they have discretion when deciding what to do. The order may include things such as ensuring that a dog is kept on a 1.5m lead at all times, is muzzled, is neutered etc. (the list is not exhaustive). S.2 Dogs Act 1871 has no power of seizure.

The Local Authority may consider using powers under the Dogs Act 1871 to enforce against dog related incidents, however, it is more likely that the Local Authority would use powers in the Anti-social Behaviour, Crime and Policing Act 2014, to address lower-level incidents involving dogs. Powers available using this legislation and scenarios whereby enforcement action would be considered are detailed below.

Dealing with dog-related incidents using the Anti- Social Behaviour, Crime and Policing Act 2014.

The Antisocial Behaviour, Crime and Policing Act 2014 provides regulators with tools to deal with a wide range of dog-related Anti- Social Behaviour (ASB).

Community Protection Notices/ Warnings

Community Protection Notices (CPNs) are a low-level statutory notice that can require an individual to stop and address the cause of their anti-social behaviour. The notices can be served by local authority officers, police officers and, if designated, registered social landlords and police community support officers (PCSOs).

An authorised officer may issue a CPN to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that:

- The conduct of the individual is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and
- The conduct is unreasonable.

CPNs provide a statutory tool that can be used in cases of irresponsible dog ownership. CPNs can be used to tackle repeat irresponsible dog ownership concerns and are a more punitive measure than fixed penalty notices. CPNs can address behaviour that has a negative effect on anyone in the community, for example, dogs out of control in a park, alarming visitors to the home, straying and causing damage, or a dog that distresses or even injures other animals.

Community Protection Warnings (CPW) are issued as a first stage response, prior to the issue of a CPN, outlining the issue and actions that either prohibit behaviour or require an individual to do something to correct the behaviour. This two-stage approach ensures that suitable evidence can be obtained to meet the threshold test of persistent or continuing behaviour.

This quick intervention process allows early engagement with individuals. It improves their understanding of responsible dog ownership and the training and welfare requirements of their dog, thereby improving the behaviour of both the owner and the dog.

Examples of where the use of a CPN may be considered:

- *In a flat with shared private gardens, the owner of three dogs exercises them in the private gardens by allowing them to run loose. On many occasions, the owner has left? his flat, leaving the dogs in the gardens. This has resulted in damage to the shared garden, whilst the dog owner has also failed to make good the damage or clear up after the dogs The behaviour of the owner of the dogs has detrimentally affected the lives of other residents of the neighbouring flats who share the garden. This could be demonstrated through photographic evidence and witness statements.*

- *During their round, a postal worker regularly faces the unpredictability of dogs at one address. On previous occasions the dogs have chased the worker off the property and caused alarm by growling and attempting to bite when the worker has been posting letters through the door. The police have investigated but do not believe it meets the Dangerous Dogs Act 1991 section 3 threshold. Such a case would meet the CPN threshold because the anti-social behaviour is persistent, is unreasonable and is having a detrimental effect on the quality of the postal worker's life during the course of their work and the lives of people in the community who experience fear and distress from such persistent dog attacks on postal workers. Reports from the postal worker of the persistent nature of the behaviour can be corroborated by records or alternatively by neighbours. Failure to heed a written notice warning of a potential CPN serving, can also serve as evidence of a persistent behaviour.*

- *Whilst in the park, a local authority officer notices that a dog appears to be on its own running loose. The dog has run at a group of young children before chasing other dogs being walked on leads. An owner eventually appears but does not attempt to bring their dog under control. In this situation the CPN threshold has been met through the unreasonable actions of the owner not ensuring their dog is under control. It is deemed that the behaviour does not meet the threshold for prosecution under section 3 DDA 1991. As this is the first occasion an officer has witnessed the dog being out of control, it may be more appropriate to speak to the owner and discuss the problem. If there is little or no engagement, the officer must issue a written warning, detailing that the owner must bring the dog under control or a CPN will be issued. A failure to adhere to the written warning is evidence of the continuing nature of the behaviour by the individual which is one of the tests to be able to issue a CPN. This may or may not be built upon by witness statements that detail other occasions where the owner and dog have behaved similarly. In short, breach of the written warning is sufficient evidence to meet the 'continuing' or 'persistent' test.*

Notices will be served on the individual or body responsible for the persistent or continuing conduct that is unreasonable and having a detrimental effect on the quality of life of those in the locality. This may be the dog owner or the person in charge of the dog at that time for example, the registered owner details contained on the microchip held on a Government approved database.

In cases of multi-ownership of the dog or where one clear owner cannot be identified, officers will issue notices to anyone who has acted anti-socially with the dog and met the threshold for the CPN. This could result in multiple notices being issued for behaviour with the same dog. Denying ownership of a dog is not a defence to rejecting the application of the CPN.

Any notice served in relation to dogs will be issued with consideration of safeguarding the dog's welfare, whilst balancing the duty to respond to public concerns and uphold public safety. When considering imposing restrictions or requirements on a dog that may impact its welfare, advice will always be sought from an officer experienced in animal welfare issues or a vet. When notices are served, they will be discussed with relevant partner agencies.

If a timescale for works has not been set in the notice, then a review date will be set.

If a CPN is breached, on conviction, a fine of up to £2,500 may be imposed on an individual or up to £20,000 where an organisation is involved. Other sanctions may follow, including an Order to get works done, seizure or forfeiture of goods. The Council also has recourse to issue a Fixed Penalty Notice (FPN).

Other tools available within the Anti-social Behaviour, Crime and Policing Act 2014, include Civil Injunction, Criminal Behaviour Order (CBO) and closure powers.

Council tenants must comply with the legal responsibilities and conditions set out in their tenancy agreements, lease agreements or equivalent. A number of these conditions have been established to ensure that not only tenants, but those living with them and their visitors, act in a socially responsible and considerate way. If a tenant engages in antisocial behaviour, then tenancy enforcement option could be considered. Further information in relation to anti-social behaviour enforcement tools and tenancy enforcement can be found South Tyneside Council | Anti-social Behaviour Policy.

4.0. Public Spaces Protection Orders

Public Spaces Protection Orders (PSPOs) were introduced under the Anti-social Behaviour, Crime and Policing Act 2014.

PSPOs give local councils and the police additional powers and greater flexibility to tackle anti-social behaviour in certain areas. They have been designed to help deal with persistent anti-social behaviour which is having a harmful effect on the quality of life of people in the area.

A PSPO for Dog Control is currently in force within South Tyneside.

Dog Fouling

- An owner must not allow a dog to foul on public land without picking it up.

Dogs on Leads

- Dogs must be kept on leads no longer than 1.5 metres in:
    - South Marine Park, South Shields
    - all cemeteries in South Tyneside
- A dog owner must put a dog on a lead (no longer than 1.5 metres), when asked to do so by an authorised person.

Keeping dogs on leads can reduce the risk of dog fouling happening without the owner knowing and helps ensure that owners can keep their dogs under control for the safety of the public and other dogs.

Most parks and open spaces are free of restrictions, however if an authorised officer considers a dog, or dogs, to be out of control or causing alarm or distress, then the person in charge of the dog will be instructed to put and keep the dog on a lead.

Dogs in Certain Areas

- Dogs are not allowed on Sandhaven Beach, between the hours of 8am and 6pm from 1st May to 30th September each year.
- Dogs are not allowed in fenced off play areas. Dogs are not allowed in specified areas where slides, swings and/or climbing equipment is contained by a fence, or in tennis courts and multi-use games areas. Signs are displayed in all play areas where dogs are not allowed.
- Dogs are not allowed on school playing fields. This only applies to schools that are active, and not old fields where the associated school is closed.

Groups of Dogs

- A person must not be in control of more than **four** dogs at any one time.

The following table summarises the controls covered by the PSPO:

Activities Specified	Restrictions
Dog Fouling of Land	Regulation is borough-wide
Dog Exclusion Restricted Areas	Children’s play parks, playing fields and Sandhaven Beach (seasonal)
Dogs on Leads by Direction	When directed to do so by an authorised officer. Regulation is borough-wide
Dogs on Leads at all times	South Marine Park and all cemeteries
Maximum Number of Dogs	Maximum of four dogs permitted per person. Regulation is borough-wide

PSPO monitoring and enforcement provides the evidence where necessary to progress serious dog control issues to the next level of enforcement, i.e. Community Protection Warnings and Community Protection Notices.

The PSPO is enforceable by means of Fixed Penalty Notices which can be issued by the Police, Police Community Support Officers, or any authorised officer of the Council. The Fixed Penalty amount is £100, reduced to £50 if paid within 7 days.

Failure to pay the fixed penalty within the required timescale will result in:

- A warning letter to the address provided on the Fixed Penalty Notice.
- Prosecution, where the fine remains unpaid following the warning. The maximum fine on conviction in the Magistrates' Court is £1,000.

Sometimes, prosecution will be pursued from the outset, such as in the case of repeat offenders or circumstances where the offence is so serious that it merits prosecution. For example, a dog owner who persistently allows their dog to be out of control, despite being directed by an officer to put it on a lead, may risk prosecution rather than being issued with a Fixed Penalty Notice.

Stray Dogs

The Clean Neighbourhoods and Environment Act 2005 gave sole responsibility for stray dogs to the Local Authority. Local Authorities are tasked with the collection / removal of stray dogs from the street under the Environmental Protection Act 1990. Dog Wardens are authorised to detain and seize any stray dog on publicly accessible land. This also includes dogs that are potentially a banned breed type. In the case of the latter the Council will liaise with the Police to determine breed type and seek authority to seize the animal.

If a member of the public finds a dog straying and it is safe to check whether the dog is wearing some form of identification, then the dog may be returned directly to the owner.

If a dog cannot be reunited with its owner then contact should be made with the Council's Environmental Health Service immediately to arrange collection of the dog by Telephoning the Council's Contact Centre on 0191 427 7000. The Contact Centre will then instruct the dog warden to collect the dog as soon as possible.

If the dog has a tag with contact details or is microchipped, then the Council will try to contact the owner. If the dog cannot be taken home then it will be placed within the Council's contracted kennels.

The Council's priority is to offer a centralised and co-ordinated service for the collection of stray dogs with the aim of reuniting dogs with their owners as quickly as possible. Dog owners who have lost their dog are advised to call West Hall Kennels on 0191 529 2369 to see if the dog has been taken there. West Hall Kennels can be contacted between 9am - 6pm, Monday - Saturday and between 9am - 12noon on Sundays. If any person finding what appears to be a stray dog and wishes to look after it in the short term, they can make a request to do so. They must notify the Council of this, providing their name and address and the dogs particulars. A council officer will visit the property and assess the suitability of the arrangement. The finder must agree to meet all the care needs of the dog(s) including food and veterinary treatment. The finder must agree to keep the dog for up to one month. If the owner does not claim the dog after this period, then longer term arrangements will be considered. It must be noted that should the legal owner come forward after the statutory 28 day period and is able to prove ownership, then the finder will be asked to surrender their custodianship of the dog to their legal owner. In situations where ownership is subject to common law principles, regarding possession and title, the local authority would not become involved.

If a dog cannot be found at West Hall Kennels, other kennel providers in the area should be contacted, as a member of the public may have taken the stray directly to an alternative local kennel.

If a stray has been taken to the Council's contracted kennels, then it can be collected within the kennel's hours of operation, following payment of a release fee. The total fee to be paid will vary depending on the length of time the dog has been in the kennels.

Stray dogs seized by the Council are held for seven clear days (the statutory holding period) at its contracted kennels. Following this seven-day period, dogs that are not reclaimed are transferred into the ownership of West Hall Kennels (the Council's current contracted kennel provider) who will try to re-home them (subject to safe-guarding checks).

The Council ensure that all stray dogs in its custody receive appropriate veterinary care and attention where required. Where veterinary treatment is administered and the dog is subsequently re-claimed by its owner, then the costs for the dog's veterinary treatment shall be recovered from the owner.

Where the Council seizes a stray dog who is found to be without an implanted microchip, a microchip will be implanted before it is rehomed by the kennels. The owners will be contacted and would be expected to arrange microchipping of the dog, if this is not undertaken then a notice will be issued under the Microchipping of Cats and Dogs (England) Regulations 2023.

5.0. Microchipping

The Microchipping of Cats and Dogs (England) Regulations 2023 requires that, every dog that is older than eight weeks must be microchipped, and their details recorded on an approved UK database. The only exceptions to this are certified working dogs or where a veterinary surgeon certifies on the correct documentation that the dog should not be microchipped for health reasons.

It is an offence for owners to fail to have a dog microchipped, with non-compliant owners risking a £500 fine and prosecution.

Anyone buying or rehoming a dog, or changing address, must also update details on the database. Incorrect details linked to the microchip is also an offence and may be subject to enforcement action.

Failure to microchip or keep details up to date can result in a dog being classified as a stray and significantly reduce the chances of a dog being reunited with its owner.

In cases where a dog is not microchipped, an authorised officer of the Council will serve a notice on the keeper of the dog requiring them to have the dog microchipped within 21 days. If the keeper fails to comply with the notice, they may be prosecuted and fined. The Council has the power to seize a dog, implant a microchip and recover the cost of doing so from the keeper.

The Control of Dogs Order 1992 mandates that any dog in a public place must wear a collar with the owner's name (initial and surname), address engraved or written on it, or engraved on a dog identity tag. The legal requirement to microchip your dog does not mitigate the requirement to ensure that your dog is fitted with legal identification. Failure to comply with this legal requirement carries a fine under the Animal Health Act 1981.

6.0. Dog Breeding

The following activities require a dog breeding license:

Anyone breeding **three or more litters of puppies per year** (unless they can show that none of the puppies have been sold).

Anyone breeding puppies and advertising a business of selling them, as defined under the business test. When the business test applies it is irrespective of the number of litters produced per year and is not restricted to 'registered' businesses. Individuals can be classed as a business depending on the extent of their activities.

Factors considered when determining whether someone is "advertising a business" include:

- The number, frequency and/or volume of sales - systematic and repeated transactions using the same means of advertising are likely to indicate a commercial activity.
- High volumes of animals sold or advertised for sale could indicate a business.
- Low volumes of animals sold or advertised could indicate a business where high sale prices or large profit margins are involved.
- High range and variability in the breeds traded. A wide variety of breeds being advertised could indicate the commercial nature of the activity.
- High numbers of advertisements of puppies for sale, including on classified websites, could indicate commercial behaviour, even where there is no actual sale taking place via the Internet. This could be high numbers of advertisements at any one time or over a short period of time, and/or regularly.
- Advertising through a variety of sites, forums or media could indicate a commercial activity.

You can apply for a license by visiting Animal welfare licensing - South Tyneside Council . The fees are displayed on the web page. A license must be applied for 10 weeks before a business operates.

- Applicants must prove that they can meet the licence conditions which can be found at Dog breeding licensing: statutory guidance for local authorities - GOV.UK (www.gov.uk) . If a person has been disqualified under the following legislation they may not apply for a licence in respect of any licensable activity:
  - Animal Welfare Act 2006
  - Animal Health and Welfare (Scotland) Act 2006

- Dangerous Dogs Act 1991
- Dogs (Northern Ireland) Order 1983
- Dangerous Wild Animal Act 1976
- Breeding of Dogs Act 1973
- Riding Establishments Act 1964
- Animal Boarding Establishments Act 1963
- Pet Animals Act 1951
- Protection of Animals (Amendment) Act 1954
- Performing Animal (Regulation) Act 1925
- Protection of Animals Act 1911

The following people cannot apply:

- A person who at any time held a licence revoked under regulation 15 of The Animal Welfare Act (Licensing of Activities involving Animals) (England) Regulations 2018
- A person who at any time held a licence revoked under Animal Welfare (Breeding of Dogs) (Wales) Regulation 2014
- A person who at any time held a licence revoked under Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012
- A person who at any time held a licence revoked under Welfare of Racing Greyhounds Regulations 2010

If you or your business breeds dogs without a licence you could go to prison for up to 6 months or get an unlimited fine. You could also get an unlimited fine if you break the conditions of your licence.

7.0. Animal Welfare

In situations where there is evidence of animal suffering the council may, alongside other stakeholders, explore potential breaches of the Animal Welfare Act 2006. A decision will be made which may include doing nothing, providing advice, issuing a written warning, issuing an Improvement Notice, issue a fixed penalty notice or prosecute. In extreme situations, the dog(s) may be voluntarily surrendered, formally seized and taken into possession pending a Court Order.

8.0. Making a complaint / reporting a concern

All reports of dogs dangerously out of control that involve a person or service dog being injured or a report relating to a suspected banned breed should be logged with the **Police** by contacting **101**.

In cases of an ongoing emergency relating to a dog that is dangerously out of control and where there is imminent risk, the emergency services should be contacted by dialling **999**.

Other dog control issues can be reported to South Tyneside Council in the following ways:

1. Online at: Leave a complaint - South Tyneside Council
2. by calling the Council's Contact Centre on 0191 427 7000;
3. by email to environmental.healthmailbox@southtyneside.gov.uk

The following information is required in order that a full initial assessment of a case can be made:

- Name, address, and contact number(s) of the complainant.
- The location of the incident and the name of the person/s involved (if known);
- Complaint details, including where, when and in what circumstances it occurs, including whether a first-time or recurring complaint
- An explanation of the impact the complaint is having.

In the initial stages of complaint investigation, enforcement officers will seek to protect the identity of a complainant or witness from being revealed to the subject of the complaint. However, if a case becomes subject to formal enforcement action, those involved should expect their identity to be disclosed, as it is likely they may be required to give evidence to a court.

All complaints are recorded on the Environmental Health Management Information System, and a log maintained of actions taken and decisions made. Information is retained in accordance with the Council's documents and records retention Policy. All complaint investigations are undertaken in accordance with the Council's Enforcement Policy.

9.0. Partner Involvement

Anti-social behaviour often requires a multi-agency approach as the cause and effect of the behaviour can fall across various agencies and areas of responsibility. In addition, victims are less interested in which agency addresses the issue, than they are in having the issue addressed effectively. The same is true of incidents involving dogs that cause concern to individuals in the community.

The Police will lead on all matters concerning dangerous dogs. The Council will address lower level ASB related dog incidents. The table at Appendix A provides a summary of powers and responsibilities and outlines where partners may lead on dog related issues.

The Council and Northumbria Police have identified key officers to facilitate information sharing and collaboration. All incident statistics and enforcement action are shared.

10.0. South Tyneside Corporate Complaints

You may not be satisfied with the level of service from the Local authority in relation to your complaint. You can log a complaint via one of the following methods:

- Online using our Complaints form
- In person at South Shields Town Hall (Customer Service Centre) or Jarrow Town Hall (Customer Service Centre)
- By telephone on **0191 427 7000**
- By letter to South Tyneside Council, Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL

You can also seek help from our Customer Advocates Service to make your complaint. You can contact them on **0191 424 6028** or by emailing complaints@southtyneside.gov.uk.

Please find a link to South Tyneside Council | Complaints Policy

Stray Dogs

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Finding a stray dog and containing it	Environmental Protection Act 1990	If a finder cannot return the dog to its owner then the Council should be informed on **0191 427 7000**. During office hours (Monday to Friday) the Authority will often arrange to collect the dog and out-of-hours a limited collection service may be Offered.	None	None
Reporting a stray dog	Environmental Protection Act 1990	If a dog is contained, then the Council can arrange collection of the dog as a stray and should be informed on **0191 427 7000.**	None	None
Suspected banned breed dogs straying	Environmental Protection Act 1990/ overlapped with Dangerous Dogs Act 1991	If the dog is contained then the Council can arrange collection of the dog as a stray and should be informed on **0191 427 7000.** If the dog is not contained and dangerously out of control then the Police should be contacted on either 101 or in an emergency situation 999.	Police will only intervene and assist the Council if the dog is dangerously out of control	None
Dogs straying on highways with restricted public access i.e. motorways	Environmental Protection Act 1990	The Local authority will only attend with the assistance of the Police or Highways	Police delegate responsibility to the Highways Agency	None

		agency. Once a dog is seized the Local authority will take responsibility for it.		
A dog whose owner is incapacitated, for instance where an individual has been admitted to hospital and there is no-one to care for the dog	The Care Act 2014 The Animal Welfare Act 2006	Technically the dog is not a stray therefore the Council are not obligated to pick the dog up as a stray. In some instances, Social Services have a duty under Care Act 2014 and Animal Welfare Act 2006 to protect property (including pets). Social services should ensure the welfare of any animals whilst the owner is hospitalised where family / friends are unable to assist.	None	None

Abandoned Dogs

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Dogs left in private properties	Animal Welfare Act 2006	The Council does not have any formal responsibility. The Council do have appointed animal welfare officers and have powers to deal with an animal in distress. If informal mechanisms fail then the Council could apply for a warrant to take action to alleviate suffering.	Police have powers to deal with an animal in distress.	May become involved if the owner of an animal is identified

Dogs abandoned on private premises such as left in domestic premises after the owner has gone, where a Landlord is known.	Animal Welfare Act 2006	The primary responsibility would fall to the Landlord of the property. The Council does not have any formal responsibility. The Council do have appointed animal welfare officers and have powers to deal with an animal in distress. If informal mechanisms fail then the Council could apply for a warrant to take action to alleviate suffering.	Police have powers to deal with animals in distress	None – Although the RSPCA often become involved
Dogs abandoned on private premises such as left in domestic premises after the owner has gone, where a Landlord is not known.	Animal Welfare Act 2006	The Council does not have any formal responsibility. The Council do have appointed animal welfare officers and have powers to deal with an animal in distress. If informal mechanisms fail then the Council could apply for a warrant to take action to alleviate suffering.	Police have powers to deal with animals in distress	None – Although the RSPCA often become involved

Dangerous Dogs

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Dogs out of control in a public place or in a place it is not allowed to be or in a private place to which the public have access	The Dangerous Dogs Act 1991 The Dangerous Dogs Act 1871 The Antisocial Behaviour, Crime and Policing Act 2014 Control of Dogs Order 1992	The Council do not have trained employees to respond to dogs dangerously out of control for repeat low level incidents may be picked up by the Council and dealt with using enforcement powers under the Antisocial Behaviour, Crime and Policing Act 2014.	The Police have primary responsibility and will respond to serious reports and those referred to them by the Local Authority.	None – Although they may assist with response if asked.
Dogs acting aggressively.	The Dangerous Dogs Act 1991 The Dangerous Dogs Act 1871 The Antisocial Behaviour, Crime and Policing Act 2014 Control of Dogs Order 1992	The Council do not have trained employees to respond to dogs dangerously out of control for repeat low level incidents may be picked up by the Council and dealt with using enforcement powers under the Antisocial Behaviour, Crime and Policing Act 2014.	The Police have primary responsibility and will respond to serious reports and those referred to them by the Local Authority.	None – Although they may assist with response if asked.
Dog attacks on a person, dog or other animal	The Dangerous Dogs Act 1991 The Dangerous Dogs Act 1871 The Antisocial Behaviour, Crime and Policing Act 2014 The Animal Welfare Act 2006	The Council will only investigate very low level antisocial behaviour incidents. Any dog on person attacks will be referred to the police	The Police have primacy in the investigation of dog attacks	None

Dangerous Dog Register

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Banned breed register	The Dangerous Dogs Act 1991 DEFRA have the responsibility to maintain a register of all banned breeds of dogs kept in the UK and to ensure that Insurance policies are maintained for these dogs. No one takes direct responsibility for ensuring the dogs are kept in accordance with the regulations.	None- The Council may refer a suspected banned breed dog to Defra to ensure that it has been registered.	None – The Police may refer a suspected banned breed dog to Defra to ensure that it has been registered.	None

Banned Breed of Dogs

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Banned breeds if an owner is known	The Dangerous Dogs Act 1991	Council may raise reports with the Police	The Police have primary responsibility and will respond to those referred to them by the Local Authority. Each Police Authority should appoint a Dog Legislation officer to deal with dangerous dogs and will follow up on all reports.	None

Banned Breeds if an owner is not known and in a public place	The Dangerous Dogs Act 1991 The Environmental Protection Act 1990	The Council will pick up a stray banned breed dog as a stray. West Hall Kennels and the Police will be informed so an assessment can be made when the dog arrives at the kennelling facility. If no owner comes forward any dog that meets a banned breed standard will not be rehomed.	Police will be involved with specifying a breed.	None
Banned breed detained in kennels and no owner identified	The Dangerous Dogs Act 1991 – It is illegal to sell or gift a banned breed	The Council will approve the destruction of a banned breed once the breed has been officially specified by the Police	Police involved with specifying a breed.	None

Organised Dog Fights

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Suspicion	The Dangerous Dogs Act 1991 The Animal Welfare Act 2006	None – Although any concerns may be raised to the Police	The Police take the lead in investigations and liaise with the RSPCA for prosecutions, if a criminal offence has been committed.	The RSPCA take the lead in prosecutions of cruelty
Organised dog fighting	The Dangerous Dogs Act 1991 The Animal Welfare Act 2006	None - Although any concerns may be raised to the Police	The Police take the lead in investigations and liaise with the RSPCA for prosecutions, if a criminal offence has been committed.	The RSPCA take the lead in prosecutions of cruelty

Unwanted Dogs

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
An owner no longer wants to care for an animal	-	The Council has no responsibility, it is the owners responsibility to provide for the dog or hand the dog over to someone who is willing to provide for the dog. Many animal welfare organisations will assist in extreme circumstances.	None	None – May offer advice or assistance at a local level
The Police take into custody a person who owns a dog and they may not want the dog anymore.	-	None	The Police have primary responsibility for the safe keeping of prisoners, property and a duty of care for the dog. It is for them to acquire the prisoner's agreement what to do.	None
Social services have a dog that the owner has died or taken into hospital.	The Care Act 2014	In some instances, Social Services have a duty under Care Act 2014 and Animal Welfare Act 2006 to protect property (including pets). Social services should ensure the welfare of any animals whilst the owner is hospitalised where family / friends are unable to assist.	The Police have no responsibility but may offer assistance in gaining access to an empty property.	The RSPCA has no responsibility but at local level may have schemes to help.

Sick and Injured Dogs

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Straying	Animal Welfare Act 2006 The Environmental Protection Act 1990	The Council will collect as a stray and if injured will be responsible for providing care.	The only responsibility Police have is the scene of a road traffic accident	None
Road traffic accidents	Road Traffic Act 1974	None	The Police have responsibility for the care of injured and uninjured animals at the scene of a road traffic accident and will call a contractor to assist.	None
Dogs in distress unattended either inside or outside of a property	Animal Welfare Act 2006	If the animal is a stray then the Council has a responsibility. If the animal is on private land then the Council does not have a responsibility. Animal welfare is a discretionary duty for Councils. South Tyneside Council have appointed animal welfare inspectors and may take action in relation to animal welfare, this is determined on a case-by-case basis	The Police have a duty to protect life and property.	None – Although often take responsibility

Dog Breeding

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Dog Breeding	The Animal Welfare (Licensing of Activities Involving Animals) England Regulations 2018	The Council has responsibilities in relation to licensed premises and for those not registering.	None – May assist the Council	None – May assist the Council
Unlicensed dog breeding	The Animal Welfare (Licensing of Activities Involving Animals) England Regulations 2018	The Council has responsibilities in relation to licenced premises and for those not registering. Scaled breeding can quite often be linked to organised crime therefore the Council will seek to undertake partnership working	None- May assist the Council	None – May assist the Council

Cruelty

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Cruelty	The Animal Welfare Act 2006	Animal welfare is a discretionary duty. The Council have appointed animal welfare officers, who would investigate and liaise with Police and RSPCA to ascertain who would be best placed to lead on an investigation, this would be determined on a case-by-case basis.	Police can assist in the execution of warrants	The RSPCA may take the lead and progress cases of neglect and cruelty

Dog left in a hot car

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Dog left in vehicle	The Animal Welfare Act	None – The Council do not have power to enter vehicles	Police would take the lead where forced entry is required	None – May attend

Noise

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Noise associated with dogs	The Environmental Protection Act 1990		None	None

Public Space Protection Order

Dog Related Incidents	Legislation	Council Responsibility	Police Responsibility	RSPCA Responsibility
Public Space Protection Order – Dog Control	The Anti-social Behaviour, Crime and Policing Act 2014	The Council are responsible for adopting and ensuring compliance with orders. The Council ensures that there is signage so members of the public are aware of the order. Enforcement is generally via fixed penalty notice.	None	None

APPENDIX 4

Air Quality Enforcement Policy

Public Protection 2024

South Tyneside Council

Spread the word!

THIS IS SOUTH TYNESIDE

Contents

1.0. Introduction

South Tyneside Council adopts a collaborative, corporate-wide approach to air quality led by its Place and Communities Team. Within Place and Communities, the Environmental Health Service is responsible for overseeing Local Air Quality Management (LAQM), including air quality monitoring and reporting results to the Department of Environment, Food and Rural Affairs (Defra); complaints associated with air quality, regulating industrial processes and assessing air quality as part of the planning function.

The Trading Standards Team are responsible for enforcing the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020.

This policy explores the regulations associated with the control of air pollution and the regulatory and development management function carried out by the Environmental Health Team, it will also discuss enforcement tools contained within the Clean Air Act 1993, the Environmental Protection Act 1990 and discuss the amendments to these pieces as enacted by the Environment Act 2021.

2.0. Objectives

- Communicate our policies, powers and procedures to the public.
- Provide advice and guidance on the appropriate control of air quality.
- Take timely and appropriate action to control, mitigate and seek to prevent serious or persistent air pollution offences through proactive and reactive assessment.
- Keep all parties involved in a complaint informed of any significant developments in our investigations.
- Actively liaise with and assist other agencies in a co-ordinated and mutually supportive way to provide the best overall remedy to air pollution problems.
- Seek to protect the identity and confidentiality of those making complaints about noise until enforcement proceedings begin and seek to protect the identity and confidentiality of persons about whom complaints have been made.
- Ensure that our actions are proportionate and reasonable and do not infringe the rights of others who may be the target of malicious or unfounded complaints.
- Act in a fair and impartial manner, ensuring that our policies serve all parties fairly and enforce the law in a non-discriminatory manner.
- Ensure that all our actions and decision-making is properly recorded and transparent and that we are accountable for our decisions.
- Maintain the Health and Safety of our enforcement officers.

3.0. Legal Controls

The Council will review each individual case on its merits and decide as to the most appropriate piece of legislation to pursue, and in certain circumstances this may involve one or more of the legislations cited below.

3.1. The Clean Air Act 1993

The Clean Air Act 1993 contains specific legislation to deal with issues such as the height of chimneys on trade and industrial premises, the operation of furnaces, problems caused by dark smoke and the use of authorised fuels in a smoke control area.

The main requirements of Part I, II and III are discussed below.

The Environment Act 2021 has amended the Clean Air Act 1993 replacing the criminal offence of emitting smoke from a chimney in a smoke control area with a civil penalty regime, which allows for the removal of the statutory defences that currently hinder enforcement. It also strengthens the offences in relation to the sale and acquisition of certain solid fuels for use in smoke control areas, by removing the limit on the fine for delivering unapproved solid fuels to a building in a smoke control area, and requiring retailers of solid fuels to notify customers that that it is illegal to buy unapproved fuel for use in a smoke control area unless burning in an approved appliance.

Part I - Dark smoke

The Clean Air Act 1993 regulates emissions of dark and black smoke from chimneys serving furnaces of fixed boilers or industrial plant.

The term dark smoke refers to a shade on the British Standard BS2742C Ringelmann Chart and means smoke, which if compared to the chart, would appear to be as dark as or darker than shade 2. Black smoke means smoke which would be as dark as or darker than shade 4 on the chart.

Section 1 of the Clean Air Act 1993 prohibits the emission of dark smoke from a chimney on any building.

There are four defences available in any proceedings for dark smoke emissions:

- that the emission was solely due to lighting a furnace from cold
- that the emission was solely due to an unavoidable mechanical failure of part of the plant that could not have been reasonably foreseen
- that is was solely due to the unavoidable use of unsuitable fuel
- that it was due to any combination of the above

Section 2 of the act prohibits the emission of dark smoke from industrial or trade premises only, the legislation does not apply to domestic premises. Industrial or trade premises are defined as premises used for any industrial or trade purpose, or premises on which matter is burnt in connection with any trade or industrial process. This means if you burn waste at home originating from your work, then this is covered by the legislation.

Cable burning

Part IV Section 33 of the Act makes an offence of burning insulation of a cable with a view to recovering metal.

If an authorised officer gathers evidence of dark smoke offences or cable burning then Contravention to legislation relation to dark smoke or cable burning could result in the Local authority instigating prosecution proceedings carrying a maximum penalty of level 3 on the standard scale in relation to a private dwelling (£5,000) and a maximum penalty of level 5 on the standard scale in relation to any other premises (£20,000).

Part II – Smoke, grit, dust and fumes

Part II of the Act relates to the control of smoke, grit, dust and fumes.

No furnace shall be installed in a building or in any fixed boiler or industrial plant unless notice of the proposal has been approved by the Local authority. There is a requirement that new furnaces shall be so far as practicable smokeless when using fuel that it is designed to use.

The Local authority must approve grit and dust arrestment equipment for a furnace if it's going to be used to burn:

- pulverised fuel
- any other solid matter at a rate of 45.4 kilograms (kg) or more an hour
- liquid or gaseous matter at a rate equivalent to 366.4 kilowatts (kw) or more

It is an offence to allow grit or dust to be emitted from a chimney serving a furnace at a rate exceeding the relevant prescribed limits.

The Local authority may request recording measurements of grit and dust from a furnace. It is an offence to not comply with requirements if requested. The Local authority could serve notice which gives an individual 14 days to provide information relating to limits on emissions relating to grit and dust, arrestment plant for furnaces, and measurement of grit dust and fumes.

Chimneys

Unless the height of the chimney has been approved by the Local authority and any conditions attached to approval adhered to, it is an offence to cause to cause or knowingly permit a furnace to be used to:

- burn pulverised fuel
- burn at a rate of 45.4 kg or more an hour any other solid matter or
- burn at a rate equivalent to 366.4 kW or more any liquid or gaseous matter

Non-compliance with Part II can result in an authorised officer instigating prosecution proceedings with either a maximum penalty of level 3 or level 5 on the standard scale, dependent on offence. Cumulative penalties on continuance may also be issues by the magistrates for certain offences.

Part III - Smoke Control Areas

Part III relates to the regulation of smoke control areas.

'Smoke control areas' are designated areas where people and businesses:

- Must not emit a substantial amount of smoke from a chimney.
- Must use only authorised fuels (more commonly referred to as 'smokeless' fuels, unless an 'exempt appliance' is used (this applies to domestic log burners and chimineas).
- Must not buy or sell unauthorised fuel for use in a smoke control area unless it's used in an 'exempt' appliance (appliances which are approved for use in smoke control area) You must only use the types of fuel that the manufacturer says can be used in the appliance.

The majority of South Tyneside is designated a smoke control area. You can access the Defra national smoke control area maps using the following link: Smoke Control Areas (SCA) - Defra, UK

The rules cover smoke emissions in a smoke control area from:

- a chimney of any building (any structure with a roof and walls)
- a chimney for the furnace of any fixed boiler or industrial plant
- moored vessels, for example canal boats, if these are included in the scope of a smoke control area.

Non-compliance with Part III of the Act may result in an authorised officer issuing a final notice with financial penalty (£175 for a first offence and £300 for offences thereafter). Dependent on the contravention an individual may be liable on summary conviction to a fine not exceeding level 3 or level 5 on the standard scale.

3.2. Environmental Protection Act 1990

Statutory Nuisance (Section 79)

Part 3 of the Environmental Protection Act 1990 (EPA 1990) imposes a duty on every local authority to inspect its area for statutory nuisances and to take reasonable steps to investigate any complaints of statutory nuisance that it receives.

The act lists matters that could be considered a statutory nuisance, three of the issues listed are associated with the air quality and they include:

- **smoke** emitted from premises so as to be prejudicial to health or a nuisance;
- **dust, steam, smell** etc. from industrial, trade or business premises being prejudicial to health or a nuisance;

Schedule 12 of the Environment Act 2021 removed the restriction on action for statutory nuisance in relation to smoke from domestic premises in a Smoke Control Area in England (as of 1st May 2022).

For the smoke to count as a statutory nuisance it must do one of the following:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises.
- injure health or be likely to injure health.

If the local authority agree that a statutory nuisance is happening, has happened or will happen in the future, we must serve an abatement notice. This requires whoever's responsible to stop the nuisance.

Smoke not covered by statutory nuisance laws:
The following types of smoke are not covered by statutory nuisance laws:

- dark smoke from chimneys of buildings or from chimneys serving fixed boilers or industrial plants that are attached to buildings or on land
- smoke from steam trains
- smoke from premises occupied by the armed forces or visiting forces

Establishing a statutory nuisance
For a complaint to be considered a statutory nuisance as defined by the Environmental Protection Act 1990, it must materially interfere with the average person's use of or enjoyment of a premises or be prejudicial to health. This is a higher threshold than a noise that is simply inconvenient or mildly irritating.

Things that will be considered when deciding if something is a nuisance include:

- **Impact** – The problem must have a real effect on how a person can reasonably use or enjoy their property. For something to be a statutory nuisance it must also have an impact directly on a person (such as noise affecting sleep): if the effect is on property (dust on cars or window ledges), then this may not be a statutory nuisance.
- **Frequency** – Something happening just once or twice might not be a nuisance, for example a celebration event with music during the day or early evening, but if the same thing occurred more frequently, for example every other week or month, then it could be a nuisance.
- **Duration** – If something happens for a relatively short period of time it may not be a nuisance, if a disturbance is prolonged it may be considered a statutory nuisance.
- **Time-** The time an issue occurs could be a factor when determining how much it impacts an individual.
- **Reasonableness**
- **Sensitivity** – Statutory nuisance must be considered in the context of an average person, in a reasonable state of good health and having a normal pattern of everyday activity. or someone with respiratory problems being more sensitive to dust or smoke (NB – we would also encourage people to have regard to the impact they are having on more vulnerable neighbours, but statutory nuisance powers should not be used to require people to do more than would be reasonably be expected of them).
- **Public benefit** – Something might cause an inconvenience, but because it is essential to the wider public benefit it may not be considered to be a nuisance.
- **Motive** – if someone deliberately does something to cause a disturbance then this could be considered a statutory nuisance
- **Best practicable means** – This only applicable to some types of statutory nuisance which occur on business premises, if a business is doing all they reasonably can to prevent or counteract the effect of a nuisance then they will have a defence against any statutory nuisance action. Officers will therefore

consider if a business is doing all it can when deciding if something is a nuisance or not.

When an authorised investigating officer establishes gathers evidence that amounts to a statutory nuisance, a statutory abatement notice will be served requiring the nuisance to be abated (unless an exemption exists) Failure to comply with a statutory abatement notice is a criminal offence with a maximum penalty of £20,000 for industrial, trade or business premises and £5,000 for domestic premises, this may be with the addition of a daily fine for each day the offence continues after conviction for certain categories of premises.

Burning of waste (Section 31 (1) (c)

There is a general requirement that waste should not be kept, treated, or disposed of in a manner likely to cause pollution to the environment or harm to human health. Disposing of waste by burning (including burning waste on construction or demolition sites) will pollute the environment and may cause harm to human health.

The maximum penalties for this offence on summary conviction is an unlimited fine and/or twelve months' imprisonment. On conviction in a Crown Court the maximum penalties are an unlimited fine and/or five years' imprisonment.

3.3. Pollution Prevention and Control Act 1999/Environmental Permitting (England and Wales) Regulations 2010 (as amended)

It is possible to burn certain types of material if it is properly controlled so that it does not cause a problem. These activities are controlled and regulated through permits and exemptions issued by the Environment Agency and the Local Authority.

A Part B environmental permit issued by the Local authority would be required if the appliances:

- have a rated thermal input of 20 to 50 mw
- burn waste excluded from the Industrial Emissions Directive (IED) with a rated thermal input of 0.4 to 3 mw

A Small Waste Incineration Plant (SWIP) environmental permit issued by the Local authority is required if the appliance can burn either:

- less than 10 tonnes per day of hazardous waste
- less than 3 tonnes per hour of non-hazardous waste (equivalent to 72 tonnes per day)

If such material is burnt without a required permit or exemption then on conviction in the Crown Court the potential fine is unlimited and/or up to five years imprisonment.

3.4. Antisocial Behaviour, Crime and Policing Act 2014

The Antisocial Behaviour, Crime and Policing Act 2014 provides regulators with tools to deal with a wide range of Anti- Social Behaviour (ASB). The test for a CPN is when ‘*the conduct of the individual or body is having a detrimental effect, of a persistent and continuing nature, on the quality of those in the locality AND the conduct is unreasonable.*’ A CPN could be used to deal with lower-level air quality offences if they form part of a wider set of antisocial behaviour issues. The Council will always use the most appropriate legislation to deal with air quality offences, and use of the Antisocial Behaviour, Crim and Policing Act 2014 will be considered on a case-by-case basis.

South Tyneside’s Community Safety and Tenancy Enforcement Team investigate and co-ordinate all cases of anti- social behaviour.

Environmental Health work closely with our Community Safety and Tenancy Enforcement Team and attend weekly tasking meetings to discuss cases that may involve both team’s assistance. If an air quality offence such as regular burning was one aspect of a case that involved multiple anti-social behaviour issues then our Community Safety and Tenancy Enforcement Team would lead on the case.

If a CPN is breached, on conviction, a fine of up to £2,500 may be imposed on an individual or up to £20,000 where an organisation is involved. Other sanctions may follow, including an Order to get works done, seizure or forfeiture of goods. The Council also has recourse to issue a Fixed Penalty Notice (FPN) further information in can be found in South Tyneside Council’s Anti-social Behaviour Enforcement Policy.

Other tools available within the Act include Civil Injunction, Criminal Behaviour Order (CBO) and closure powers.

3.5. The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020

Sales of domestic solid fuel in all of England are regulated under the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020, this includes traditional house coal, wood and manufactured solid fuels.

Our Trading Standards colleagues enforce this legislation, any complaints in relation to contravention of this legislation will be provided to the Trading Standards Team.

All suppliers, distributors and retailers can continue to sell ‘smokeless’ fuels, including anthracite coal; semi-anthracite coal and low volatile steam coal.

Traditional house coal is not approved for use in smoke control areas in England unless it is used in an appropriate exempt appliance. Sales of traditional house coal for use in homes is illegal in England as of 1 May 2023.

Wood sold in volumes under 2 cubic metres must be certified as ‘Ready to Burn’. It must also have the following information either attached to the packaging, alongside the wood on the shelf or next to the price:

- the logo
- supplier details
- unique certification number

- This information must be clearly displayed to confirm that the fuel has a moisture content of 20% or less.

All suppliers who sell wood in volumes of 2 cubic metres or more in England must provide customers with a notice that explains how to dry, store and check the moisture of the wood before it is used. All manufactured solid fuels must be certified for use to be legally sold.

The following information must be either attached to the packaging, alongside it on the shelf or next to the price:

- the Ready to Burn logo
- manufacturer details
- unique certification number

Non-compliance with legislation may result in a £300 Fixed Penalty Notice, or a more substantial fin issues by the Courts for a second offence.

4.0. Making a complaint

You may wish to contact the Environmental Health Team which is part of the wider Place and Communities Directorate, to provide advice and investigate your complaint in relation to air quality.

A formal complaint to the Council can be made in the following ways:

1. Online at:(discuss with ICT/comms) potential new AQ email
2. Telephone Environmental Health on 0191 427 7000;
3. E-mail to environmental.healthmailbox@southtyneside.gov.uk

The following information is needed following a complaint in order that a full initial assessment can be made of a case:

- Name, address, and contact number(s) of the complainant;
- Location of where the complaint is coming from and the name of the person/business responsible (if known);
- Details of the type of complaint, how long it lasts for and how often it occurs;
- An explanation of the impact the complaint is having and where, when, and in what circumstance it occurs;
- Details of any action taken to try and deal with the problem.

In the initial stages of a case, we will seek to protect the identity of a complainant or witness from being revealed to the subject of the complaint. However, depending on the nature of the complaint, this may not be practicable as the source of it may be obvious, or the subject may reasonably assume where it has come from. If a case becomes subject to formal enforcement action, those involved should expect their identity to be disclosed, as it is likely they may be required to give evidence to a court.

All complaints will be recorded, and a log will be maintained of actions taken and decisions made. Information will be retained in accordance with the Council's documents and records retention policy.

Our investigation procedure can typically be set out in a series of set stages, although each case is different and may require a tailored approach.

5.0. Air Quality Complaint Procedure

All complaints are initially screened by our Business Support Colleagues, who will aim to acknowledge receipt of the complaint in a timely manner. Dependent on the issue reported the complaint may be referred directly to the Environmental Protection Team to investigate immediately and action, an example would be burning of commercial waste, dark smoke complaints/cable burning, selling unauthorised fuel (to be passed to Trading Standards Team).

For most other investigations the complainant will be sent an initial letter that contains a nuisance record form, we ask that the complainant records all disturbance over a 28-day period.

With the complainant's agreement the team will write to the owner/occupier or person responsible for the location where the complaint is emanating from to advise them of the complaint; and request they review their activities if they have been causing a nuisance. Very often this initial approach is sufficient to resolve matters and no further action is necessary by the Council. The case will then be closed.

The team will leave the case open for 28 days and wait to receive the nuisance record form to understand whether initial contact with the subject has resolved the issue, if they do not receive the completed form the case will be closed.

The nuisance record form aims to record the complainant's experience of the issue that is problematic. It is essential that as much information as possible is included. They provide valuable evidence for the case officer about the nature and severity of the problem, the number of incidents, their frequency, duration, time of day, and the impact upon those involved. For a minority of complainants who, for good reason, cannot complete the nuisance record form then officers will consider alternative arrangements in order to find the best way of collecting the information that we need.

Receipt of nuisance record form

Once the nuisance record form is received the case will be assigned to a member of the Environmental Protection Team. The evidence contained in the record form will be reviewed by an officer along with any other evidence obtained (i.e. photographs or video evidence) to that point and the overall circumstances of the case.

If it is unlikely that an officer can progress a complaint using the legislation outlined in this document the complaint will be closed.

If the evidence collated indicates that there is a reasonable potential for a case to progress the case officer will communicate next steps to the complainant and ask that they assist us with gathering further evidence. The subject of the complaint will receive further correspondence to advise that further investigation will occur, and it may include monitoring visits.

Further gathering of evidence may include:

Reactive observations – This is when we have an active investigation and we receive notification from the complainant that the activity is occurring at that time. We will seek to visit with the complainant or the subject address to substantiate their complaint and where appropriate, gather evidence to support further action. However, this is dependent on the resources available at the time and no guarantees can be offered that an officer can attend at short notice.

We do have an out of hours noise service operational out of hours 7 days a week, which is reserved for those cases that are at a point where formal action is underway i.e., a notice has been served.

Proactive observations - This is where we target specific premises that are known to be causing an air quality offence or where we believe there is the potential for an air quality offence to be undertaken. We will use this approach where we have evidence to show regular patterns of reoccurring disturbance.

Independent evidence - Independent evidence from persons other than the complainant can be used to verify and support allegations of an air quality offence. In the event that there are criminal proceedings against the person/ business committing the offence the evidence would need to be provided with a witness statement from the individual providing it, and witnesses might need to attend court to give evidence. We also use witness statements produced by independent professional witnesses, such as the Police and Housing Officers, to support investigations and enforcement.

6.0. Enforcement Options

In relation to air quality enforces offences, there is a range of enforcement options based on the relevant legislation listed within this document. The enforcement options selected will be determined by the type of offence and the legislation governing. Our enforcement action will always follow a stepped approach and will always act in accordance with South Tyneside Councils

Enforcement Policy. Potential enforcement actions could include:

- **Written Warning** - This is not a legal requirement but is the first step in notifying an individual that the activity they are undertaking gives rise to a contravention of relevant legislation.

- **Notice of intent** (Schedule 1A of the Clean Air Act (as amended by the Environment Act 2021) – Is issued to an individual responsible for substantial smoke emissions from a chimney in a smoke control area. It advises that the Council intend on issuing a financial penalty.

- **Final notice with financial penalty** – following a notice of intent, a final notice with financial penalty of £175 for a first offence and £300 for following offences.

- **Fixed Penalty Notice** (The Air Quality (Domestic Solid Fuels Standards))- can be served for offences in relation to selling unauthorised fuel to customers, an initial penalty of £300 for a first offence, a more substantial fine can be issued by the courts in relation to offences thereafter.

- **Statutory abatement notice** – Will be issued when sufficient evidence has been gathered to substantiate a statutory nuisance.

- **Community Protection Notice** - Intended to deal with ongoing problems or nuisances which negatively affect the community's quality of life, by targeting those responsible.

- **Simple caution** - These may be issued following the service of a statutory notice and the admission of guilt involving first time, low-level, offences.

- **Prosecution -** We may consider prosecution for multiple substantiated breaches of statutory notices, i.e. where statutory notices have not been complied with of for non-compliance with other offences listed under the Clean Air Act 1993, Environmental Protection Act, Pollution Prevention and Control Act 1999. Financial penalties are set out in the relevant legislation.

- **Civil Injunction -** The council can apply for a Civil Injunction from the Court to stop or prevent individuals engaging in anti-social behaviour which is likely to cause nuisance or annoyance. The injunction under Part 1 of The Antisocial Behaviour, Crime and Policing Act 2014 is a civil power which can be applied for to deal with anti-social individuals.

- **Criminal Behaviour Order (CBO)** - is aimed at tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. The Council can apply for a CBO to deal with a wide range of anti-social behaviours following the individual's conviction for a criminal offence.

- **County Court Injunction** - May be pursued for serious and persistent breaches of statutory notices where proceedings in the Magistrates' Court have failed to ensure compliance with a statutory notice.

7.0. Partner Involvement

Environmental Health work in close partnership with internal colleagues including Trading Standards and Community Safety and Tenancy Enforcement Teams as well as external partners to proactively manage any complaints relating to air quality.

The Environment Agency – The Agency are responsible for permitting certain industry and activities. The Council may refer matter to them for enforcement action.
Tasking Group – This group sits on a weekly basis and involves Environmental Health, Community Safety and Tenancy Enforcement, Police, Victim Support, Environmental

Enforcement colleagues that meets to consider crime and antisocial behaviour within South Tyneside with a view to providing a multi-agency response.

8.0. South Tyneside Corporate Complaints

You may not be satisfied with the level of service from the Local authority in relation to your complaint. You can log a complaint via one of the following methods:

- Online using our Complaints form
- In person at South Shields Town Hall (Customer Service Centre) or Jarrow Town Hall (Customer Service Centre)
- By telephone on **0191 427 7000**
- By letter to South Tyneside Council, Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL

You can also seek help from our Customer Advocates Service to make your complaint. You can contact them on **0191 424 6028** or by emailing complaints@southtyneside.gov.uk.

Please find a link to South Tyneside Council | Complaints Policy

APPENDIX 5

Neighbourhood Noise Policy

Public Protection 2024

South Tyneside Council

Spread the word!

THIS IS SOUTH TYNESIDE

Contents

1.0. Introduction

South Tyneside Council is committed to improving the health and wellbeing of our residents and the quality of their surroundings. Noise is defined as unwanted sound and can be irritating and stressful. Neighbourhood noise can include noise from industrial and commercial activities, recreational and entertainment sources, and that created by neighbours.

It is important to note that there is no right to absolute peace and quiet and people need to be tolerant of occasional disturbance from noise.

This policy, along with our Enforcement policy sets out the general approach the Council will adopt when enforcing noise legislation. Where possible and appropriate, issues will be resolved informally, however formal action will be pursued should informal action prove ineffective in resolving the issue. We will work with partner agencies in a joined-up approach to proactively manage residents' complaints of unreasonable noise or noise associated with Anti-social behaviour.

2.0. Objectives

- Communicate our policies, powers and procedures to the public;
- Provide advice and guidance on the appropriate control of noise;
- Take timely and appropriate action to control, mitigate and seek to prevent serious or persistent noise through proactive and reactive assessment;
- Keep all parties, involved in a complaint, informed of any significant developments in our investigations;
- Actively liaise with and assist other agencies in a co-ordinated and mutually supportive way, to provide the best overall remedy to noise problems;
- Seek to protect the identity and confidentiality of those making complaints about noise until enforcement proceedings begin and seek to protect the identity and confidentiality of persons about whom complaints have been made;
- Ensure that our actions are proportionate and reasonable and do not infringe the rights of others who may be the target of malicious or unfounded complaints.
- Act in a fair and impartial manner, ensuring that our policies serve all parties fairly and enforce the law in a non-discriminatory manner;
- Ensure that all our actions and decision-making is properly recorded and transparent and that we are accountable for our decisions;
- Maintain the Health and Safety of our enforcement officers;

3.0. Legal Controls

The Council will review each individual case on its merits and decide as to the most appropriate piece of legislation to pursue, and in certain circumstances this may involve one or more of the pieces of legislation cited below.

Environmental Protection Act 1990
Part 3 of the Environmental Protection Act 1990 (EPA 1990) imposes a duty on every Local Authority to inspect its area for statutory nuisances and to take reasonable steps

to investigate any complaints of statutory nuisance that it receives; this task is delegated to Environmental Health Officers.

Certain noise can be deemed a statutory nuisance, the Act lists all categories of noise that could be considered a statutory nuisance:

- **noise emitted from premises** so as to be prejudicial to health or a nuisance;
- **noise** that is prejudicial to health or a nuisance and is emitted **from or caused by**
- **a vehicle, machinery, or equipment in a street** (NB this does not include noise from traffic).

The term "prejudicial to health" is defined in the Act as being "injurious, or likely to cause injury, to health". This term has been further clarified by the Courts to exclude things which might give rise to physical injury. The majority of complaints are dealt with as a potential "nuisance" rather than proving the more difficult alternative "prejudicial to health".

For a complaint to be considered a statutory nuisance as defined by the Environmental Protection Act 1990, it must materially interfere with the average person's use of or enjoyment of a premises, or be prejudicial to health. This is a higher threshold than a noise that is simply inconvenient or mildly irritating.

Factors that will be considered when deciding if something is a nuisance include:

- **Location-** Is the noise typical for the area? e.g., a cockerel crowing in the countryside would be more acceptable than in a quiet urban street.
- **Impact** – The problem must have a real effect on how a person can reasonably use or enjoy their property. For something to be a statutory nuisance it must also have an impact directly on a person (such as noise affecting sleep):
- **Frequency** – Something happening just once or twice might not be a nuisance, for example a celebration event with music during the day or early evening, but if the same thing occurred more frequently, for example every other week or month, then it could be a nuisance.
- **Duration** – If something happens for a short period of time it is unlikely it would be deemed a statutory nuisance; if a disturbance is prolonged it may be considered a statutory nuisance.
- **Time-** The time a noise occurs could be a factor when determining how much it impacts an individual.
- **Reasonableness** – Everyday activities e.g. flushing toilets, footsteps, talking, closing doors, children playing, will not amount to a statutory nuisance. The Council cannot require people to do over and above what they should be reasonably expected to do.
- **Sensitivity** – Statutory nuisance must be considered in the context of an average person, in a reasonable state of good health, and having a normal pattern of everyday activity.
- **Public benefit** – Something might cause an inconvenience, but because it is essential to the wider public benefit, it may not be a nuisance.

- **Motive** – if someone deliberately does something to cause a disturbance then this could be considered a statutory nuisance, e.g. deliberately slamming a door or banging on a wall.
- **Best practicable means** – This only applies to some types of statutory nuisance which occur on business premises. If a business is doing all they reasonably can to prevent or counteract the effect of a nuisance then they will have a defence against any statutory nuisance action.

Examples of things that have been found to be a statutory noise nuisance:	**Examples of things that have been found not to be a statutory noise nuisance:**
Music being played every week during the early evening and into the night which was so loud that neighbours could not hear their TV without turning the volume up.	A person carrying out DIY during the day and at weekends over a few weeks.
Dogs left at home on their own all day and barking frequently throughout the day	Noise from children playing on a trampoline in their garden.
A business installing and using a new machine without noise insulation.	A party which happened just once a year and finished at a reasonable time early in the evening.
An intruder alarm that is sounding constantly	A dog barking intermittently when people visit the house.

Where noise is investigated by an authorised officer and evidence is gathered to demonstrate that the noise amounts to a statutory nuisance, a statutory abatement notice will be served requiring the nuisance to be abated (unless an exemption exists). Failure to comply with a statutory abatement notice is a criminal offence with a maximum penalty of £20,000 for industrial, trade or business premises and £5,000 for domestic premises, this may be with the addition of a daily fine for each day the offence continues after conviction, for certain categories of premises.

When dealing with a noise nuisance case the Council may additionally be able to apply to the Magistrates' Court to seize the noise making equipment, including televisions, radios and computers. It can apply for a forfeiture order to retain any items that have been seized.

If the Councilis unable to investigate a complaint or take formal action, Section 82 of the Environmental Protection Act 1990 makes provision for private individuals, aggrieved by the existence of a statutory nuisance, to take their own action direct to the Magistrates' Court.

Antisocial Behaviour, Crime and Policing Act 2014

The Antisocial Behaviour, Crime and Policing Act 2014 provides regulators with tools to deal with a wide range of Anti-Social Behaviour (ASB).

The Principal tool for controlling noise-related ASB is the Community Protection Notice (CPN). The test for a CPN is when '*the conduct of the individual or body is having a detrimental effect, of a persistent and continuing nature, on the quality of life of those in the locality AND the conduct is unreasonable.*' A CPN can be used to deal with noise at a lower standard compared to the relatively high bar required for statutory nuisance, however the noise must impact more than one person.

At times noise may not be the only contributing factor to an individual's complaint, some complaints may be more complex and involve a range of anti-social activities. South Tyneside's Community Safety and Tenancy Enforcement Team investigate and co-ordinate all cases of anti-social behaviour.

Environmental Health work closely with our Community Safety and Tenancy Enforcement Team and attend weekly tasking meetings to discuss cases that may require input from both teams. If noise nuisance was one aspect of a case that involved multiple anti-social behaviour issues, then our Community Safety and Tenancy Enforcement Team would lead on the case.

If a CPN is breached, on conviction, a fine of up to £2,500 may be imposed on an individual or up to £20,000 where an organisation is involved. Other sanctions may follow, including an Order to get works done, seizure or forfeiture of goods. The Council also has recourse to issue a Fixed Penalty Notice (FPN). Further information on the enforcement options available to deal with anti-social behaviour can be found in South Tyneside Council's Anti-social Behaviour Enforcement Policy.

Other tools include Civil Injunction, Criminal Behaviour Order (CBO) and closure powers.

The Control of Pollution Act 1974
This Act contains specific powers to control noise from construction sites.Most normal building, refurbishment, renovation/alteration, maintenance, repair, decoration, or demolition work will be covered by these powers. The hours of work can be restricted, and conditions imposed such as to specify what machinery can be used, how it should be used and where it should be located.

The Licensing Act
The Act contains four licensing objectives, one of which is the prevention of public nuisance which includes noise. Conditions to control noise can be included on premises licenses and there is the option for licenses to be reviewed. Information on these procedures can be found Licensing - South Tyneside Council

Best practice guidance and recognised codes of practice are closely adhered to and used to support the licensing objective, prevention of public nuisance.

The Clean Neighbourhoods and Environment Act 2005
This Act makes provision for dealing with noise from defective audible intruder alarms and vehicle repairs carried out on the street.

The Town and Country Planning Act 1990
The Town and Country Planning Act 1990 may impose planning conditions on your premises, some of which may be to control noise either directly i.e., requiring additional sound insulation, or indirectly i.e. stipulating opening and closing times.

4.0. Making a Complaint

You may feel that a noise issue caused by a neighbour is excessive, and it may be affecting you substantially in your own home. If you are able, and it is safe to do so, you may wish to approach your neighbour and explain the problem, this may resolve the issue informally.

We understand that in some cases this is not possible, in which case you may want to contact the Environmental Health Team for advice and/or to request investigation of your complaint.

A formal complaint to the Council can be made in the following ways:

1. Online at: Report a noise problem - South Tyneside Council
2. Telephone Environmental Health on 0191 427 7000;
3. E-mail environmental.healthmailbox@southtyneside.gov.uk
4. In writing: Environmental Health, Level 2, Town Hall and Civic Offices, South Shields, Tyne and Wear, NE33 2RL

It is important to note that the Local Authority cannot deal with every day sounds of living in dwellings such as children playing, people walking across floors and occasional dog barking. This also includes reasonable periods and levels of music playing/televisions, DIY works being carried out at reasonable times for a limited period.

We are unable to investigate incidents that occur infrequently. Gathering evidence and witnessing the noise complained of is fundamental in all noise complaint investigations.

The following information is needed in order that a full initial assessment of a case can be made:

- Name, address, and contact number(s) of the complainant;
- Location of where the noise is coming from and the name of the person responsible (if known);
- Details of the type of complaint, how long it lasts for and how often it occurs;
- An explanation of the impact the noise is having, and where, when, and in what circumstance/s it occurs;
- Details of any action taken to try and deal with the problem.

We will not routinely investigate anonymous complaints.

Confidentiality
In the initial stages of an investigation we will seek to prevent the identity of a complainant or witness from being revealed to the subject of the complaint. However,

depending on the nature of the complaint, this may not be practicable as the source of complaint may be obvious, or the subject may reasonably assume where it has come from. If a case becomes subject to formal enforcement action, those involved should expect their identity to be disclosed, as it is likely they may be required to give evidence to a court.

All complaints will be recorded and a log will be maintained of actions taken and decisions made. Information will be retained in accordance with the Council's documents and records retention policy.

5.0. Noise Complaint Procedure

Our investigation procedure can typically be set out in a series of set stages, although each case is different and may require a tailored approach.

It is important to note that at any point a complainant fails to assist with an investigation this will likely result in your complaint being closed, for example:

- Not completing and returning your nuisance record form.
- Failing to keep in touch with the investigating officer to provide updates on the current noise climate.
- Not allowing access to you home to witness the noise or refusing to have noise monitoring equipment installed.

Initial assessment and action

All complaints are initially screened by our Business Support Colleagues, who will aim to make contact with the complainant in a timely manner by phone, email or letter to discuss the case.

The complainant will be sent an initial letter that contains a nuisance record form, we ask that the complainant records all disturbance over a 28-day period.

With the complainant's agreement the Local Authority will write to the owner/occupier or person responsible for the location from where the noise is emanating to advise them of the complaint; and request that they review their activities if they have been causing a nuisance. Very often this initial approach is sufficient to resolve matters and no further action by the Council is necessary. Generally cases will remain open for 28 days awaiting receipt of the nuisance record form. This completed record will enable the investigating officer to understand whether initial contact with the subject has resolved the issue. If the completed nuisance record form is not returned then the case will be closed.

The aim of the nuisance record form is to provide a record of the complainant's experience of the issue that is problematic. It is essential that as much information as possible is included. These records provide valuable evidence for the case officer about the nature and severity of the problem, the number of incidents, their frequency, duration, time of day, and the impact upon those involved. For a minority of complainants who, for good reason, cannot complete the nuisance record form, then officers will consider alternative arrangements in order to find the best way of collecting the information that we need.

Receipt of nuisance record form

Once the nuisance record form is received the case will be assigned to a member of the Environmental Protection Team. The evidence contained in the record will be reviewed by an officer along with any other evidence obtained up to that point and details of the overall circumstances of the case.

If it is unlikely that an officer can progress a complaint using the legislation outlined in this document the complaint will be closed and this information will be communicated to you.

If the evidence collated indicates that there is a reasonable potential for a case to progress, the case officer will communicate next steps to the complainant and ask that they assist us with gathering further evidence over the next 28 days. The subject of the complaint will be contacted to advise that further investigation will occur, and that this further investigation may include monitoring visits or the installation of noise monitoring equipment to gather further evidence. The planned dates/times of when monitoring is to be undertaken will not be shared with the subject of a complaint.

Further gathering of evidence may include:

Reactive observations – This refers to active investigations where notification is received from the complainant that the noise is occurring at that time. We will seek to visit the complainant at their home or business to substantiate their complaint and where appropriate, gather evidence to support further action. However, this is dependent on the resources available at the time and no guarantees can be offered that an officer can attend at short notice.

We do have an out of hours noise service operational 7 days a week, and reserved for those cases that are at a point where formal action is underway i.e., a notice has been served.

Proactive observations - This relates to the targeting of specific premises that are known to us for causing noise complaints, or where we believe there is the potential for a noise nuisance. We will use this approach where we have evidence to show regular patterns of recurring disturbance.

Unattended monitoring - This is where we place specialist noise monitoring equipment in the complainant's home for 7 days to enable them to record the noise complained of. The equipment continually monitors the noise levels, however it will only ever record the actual sounds when the complainant activates the record switch, enabling them to capture the noise they are complaining about.

The equipment used by the Environmental Health Team has been specifically designed for this particular purpose and is widely used by other Councils and Social Housing providers to assist in investigating complaints of noise.

Independent evidence - Independent evidence from persons other than the complainant can be used to verify and support allegations of noise nuisance. In the event that criminal proceedings against the person making the noise are being considered, this evidence would need to be in the form of a witness statement, and witnesses might need to attend court to give evidence. We also use witness statements produced by independent professional witnesses, such as the Police and Housing Officers, to support investigations and enforcement.

Enforcement Options

The case officer will review all evidence obtained to establish whether a significant and actionable noise disturbance has occurred. Enforcement decisions will be taken in line withSouth Tyneside Councils Enforcement Policy for regulatory services'.

In relation to noise the following enforcement actions may be pursued:

- **Statutory Abatement Notice** - Where a statutory nuisance has been substantiated or where formal enforcement action is considered necessary and appropriate.
- **Community Protection Notice (CPN)** - Intended to deal with particular ongoing problems or nuisances which negatively affect the community's quality of life, by targeting those responsible.
- **Fixed Penalty Notice (FPN)** - Under certain circumstances a FPN can be used to discharge the liability from conviction for the offence of breach of a CPN.
- **Control of Pollution Act 1974, Section 60 Notice** - Covers noise from construction sites.
- **Simple caution** - These may be issued following the service of a statutory notice and the admission of guilt, in respect of first time, low-level, offences.
- **Seizure of noise making equipment -** This may occur where there have been substantiated or repeated breaches of a statutory notice or CPN.
- **Works in default -** If necessary, we will undertake work to resolve ongoing nuisance from audible alarms following the service of statutory notices.
- **Review of a premises licence -** This will be in accordance with the provisions of the Licensing Act 2003 on the grounds of the prevention of public nuisance.
- **Prosecution in the Magistrates' Court -** We may consider prosecution for substantiated breaches of a statutory notice, i.e. where a statutory notice has not been complied with.
- **Civil Injunction -** The Council can apply for a Civil Injunction from the Court to stop or prevent individuals engaging in anti-social behaviour which is likely to cause nuisance or annoyance. The injunction is a civil power under Part 1 of the Antisocial Behaviour, Crime and Policing Act 2014 and can be applied for as a means of dealing with anti-social individuals.
- **Criminal Behaviour Order (CBO)** – this tool is reservedfor tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. The Council can apply for a CBO to deal with a wide range of anti-social behaviours following the individual's conviction for a criminal offence.
- **County Court Injunction** - may be pursued for serious and persistent breaches of statutory notices where proceedings in the Magistrates' Court have failed to ensure compliance with a statutory notice.

6.0. Partner Involvement

Environmental Health work in close partnership with other teams within the Council such as our Community Safety and Tenancy Enforcement Team, South Tyneside Homes, the Planning Team and the Licensing Team as well as a number of external agencies. Working with our partners in a joined up and co-operative way enables the Council to proactively manage unreasonable noise.

Our principal partners are:

- **Northumbria Police** - Officers from Environmental Health are responsible for the investigation and enforcement of noise nuisance, not the Police. However, officers liaise with the Police on a variety of noise investigations particularly where there is an anti-social behaviour concern.

- **Community Safety and Tenancy Enforcement Team** – Officers from the Community Safety and Tenancy Enforcement Team deal with all noise complaints relating to the Council's housing stock and anti-social behaviour in all tenures. Environmental Health colleagues may assist in specific cases of statutory nuisance noise if required. Where noise from anti-social behaviour is part of a wider situation then the Community Safety and Tenancy Enforcement Team will lead.

- **Tasking Group** – This group sits on a weekly basis and links Environmental Health, Community Safety and Tenancy Enforcement, Police, Victim Support and Environmental Enforcement colleagues. The group meets to consider crime and anti-social behaviour within South Tyneside with a view to providing a multi-agency response.

7.0. South Tyneside Corporate Complaints

Should you not be satisfied with the level of service from the Local Authority in relation to your case, you can log a complaint via the following methods:

- Online using our Complaints form
- In person at South Shields Town Hall (Customer Service Centre) or Jarrow Town Hall (Customer Service Centre)
- By telephone on **0191 427 7000**
- By letter to South Tyneside Council, Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL

You can also seek help from our Customer Advocates Service.. You can contact them on **0191 424 6028** or by emailing complaints@southtyneside.gov.uk.

South Tyneside Council | Complaints Policy

APPENDIX 6

Food and Feed Law Enforcement Policy

Public Protection 2024

South Tyneside Council

Spread the word! THIS IS SOUTH TYNESIDE

Contents

1.0 Introduction

The Council's Food Safety Service fulfils the statutory duty imposed on the Council as a "food authority" to ensure the effective implementation of Government strategy on food safety issues. This Food & Feed Law Enforcement Policy sets out how the Local Authority enforces Food & Feed Safety legislation and supersedes previous policies in this respect. It states what to expect from Authorised Officers when they visit businesses, and what guides them when carrying out inspections and dealing with breaches in the law.

The Policy has been written in accordance with the following:

- Food Standards Agency Framework Agreement with Local Authorities
- Food Law Code of Practice (England) issued June 2023
- Food Law Practice Guidance (issued March 2021)
- Feed Law Code of Practice (issued April 2018)

and must be read in conjunction with the Council's overarching General Statement of Enforcement Policy, the General Enforcement Policy for Public Protection Services and the annual Food and Feed Law Service Plan.

The Policy reflects the principles of Good Regulation introduced by the Legislative and Regulatory Reform Act 2006, and set out in the Regulators' Code, namely that regulatory activities should be carried out in a transparent, accountable, proportionate, and consistent manner and should only be targeted at those cases where action is necessary. Additionally, the Policy takes account of provisions established under the Regulatory Enforcement and Sanctions Act 2008 for the greater use of civil sanctions, where there is provision in legislation, enabling more effective and efficient enforcement. The use of civil sanctions will be considered on a hierarchy of enforcement basis in accordance with the Regulators' Code.

To avoid burden on the Criminal Courts, a number of sanctions are now available to Regulators for the discharge of many food safety offences under new regulations. Civil sanctions include Fixed Penalty Notices, Penalty Charge Notices, Fixed Monetary Penalties and Stop Notices.

Where policies covering use of civil sanctions are introduced under the relevant legislation, they will be approved by the appropriate Council body and will form supplementary policies to the Food and Feed Law Enforcement Policy. The Enforcement Approach will be publicised via the Food Safety pages on the Council website, including relevant enforcement tools, appeals procedures, and approaches to cost recovery through civil remedy.

A supplementary food enforcement policy in relation to relevant legislation and the use of fixed monetary penalty provisions is attached to this policy at Appendix B.

2.0 Statement of General Policy on Food and Feed Law Enforcement

South Tyneside Council is committed to ensuring as far as possible that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed within the borough is without risk to the health or safety of the consumer, is correctly labelled and satisfies their consumer rights.

The Council's approach to enforcement of food safety reflects the responsibilities placed upon the "food authority" by the Food Safety Act 1990, Food Safety and Hygiene (England) Regulations 2013, the Official Feed and Food Control (England) Regulations 2009 (as amended) and other regulations.

The Council is also committed to ensuring that feed used and produced in the Council's area is safe and complies with microbiological and compositional requirements.

The Council's Enforcement approach will be primarily based on assessment of risk to consumers, or the seriousness of a contravention of food or feed safety legislation.

The Council will apply the Codes of Practice and the Primary and Home Authority Principles and have due regard to the Primary Authority Statutory Guidance requirements.

Any departure from the policy will be exceptional, justifiable, and fully considered by relevant senior managers before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision. The reasons for any departure from the policy will be fully documented and a copy kept on the premises record.

Each case is unique and must be considered on its own merits. There are, however, general principles that apply in the way each case must be approached, these are laid out in this policy, in the Enforcement Concordat and the Regulators' Code.

The Council's Lead Food Officer will examine all proposed prosecution and proposed Simple Caution files to ensure that the action meets the principles of the Enforcement Concordat and Regulators' Code.

The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action takes place in strict accordance with the Police & Criminal Evidence Act 1984 (as amended), the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, and other relevant legislation and guidance.

Enforcement actions can have significant implications for many people, either directly or indirectly and this Policy supports stakeholders to fully understand the actions taken by the Council's Authorised Officers.

All communications with businesses will be clear and will distinguish between legal requirements and advice.

Authorised Officers will endeavour to discuss fully with duty holders any compliance failures and will consider their views before exercising formal enforcement powers, unless there is an imminent risk that requires urgent action.

Officers will assist and advise wherever possible but will also take firm action against those who act irresponsibly or flout the law. Information informing duty holders of any relevant formal appeal process or the means to query any action taken will be provided when any enforcement action is instigated.

3.0 Authorisations and Competence

In the context of the Food Safety Act 1990 and Regulations and the European Union (Withdrawal) Act 2018 and associated feed regulations, an authorised officer's powers include the inspection of food/feed premises, the inspection, detention and seizure of food/feed, the service of notices and taking emergency action. Officers will be authorised in accordance with the Food Standards Agency Food and Feed Law Code of Practice.

Authorised Officers comprise Environmental Health Officers, Trading Standards Officers, Technical (Food Safety) Officers and Regulatory /Food Safety (Sampling) Officers. An individual officer's specific authorisation and enforcement role will be dependent on qualifications, training and experience and will be determined by the lead food officer and the Lead Feed Officer in accordance with the Food Standards Agency Code of Practice and the Competency Framework requirements.

The Environmental Health Service sets standards for the qualifications, experience, and competence of its officers in line with the statutory guidance.

The criteria used to assess the competence of food Authorised Officers will be those detailed within the Environmental Health service's Competency and Authorisation procedures, as well as any specific requirements demanded by statutory Codes of Practice. Training will be given to Authorised Officers, as necessary, to ensure their understanding of this policy as part of their competency requirements.

4.0 Enforcement Approach and Decisions

Enforcement action under the Food Safety Act 1990 or any food safety or feed regulations will be initiated by Authorised Officers, who have been authorised specifically to serve Statutory Notices and to issue Penalty Notices based on their assessed competency, level of training and experience.

In considering an appropriate enforcement response the Food Safety Service aims to:

- Achieve and maintain consistency of approach in making decisions concerning food/feed safety, food standards and food/feed enforcement action.
- Ensure commitment to an approach in all enforcement decisions that is fair and balanced and relates to common standards that protect the public.

Authorised Officers involved in the enforcement of food control will be fair, independent, and objective. Officers will not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness, or offender, influence their decisions. They will not be affected by improper or undue pressure from any source.

In carrying out their regulatory activity Authorised Officers will work towards meeting the general duties outlined in the Race Relations (Amendment) Act 2000:

- Eliminating unlawful discrimination
- Promoting equality of opportunity
- Promoting good relations between people of different racial groups

Officers will also work in accordance with the Council's Equality and Diversity Policy, which covers gender, disability, age, sexuality and transgender, religion, belief, and race. Employees will receive equality and diversity training to ensure that they understand their responsibilities to promote this issue.

If requested the Environmental Health Service will ensure that documents are translated into the principal Black and minority ethnic and asylum seeker languages. Interpreters will be used for those people who have difficulties understanding English, and sign language interpreters will be arranged, as necessary. The Council's Food Safety service will also develop effective equality monitoring systems, as required.

4.1 Matters for Consideration

Officers will take account of the following considerations in coming to an enforcement decision:

- The seriousness of the offence
- The history of the business
- Confidence in management of the business
- The consequences of non-compliance
- The likely effectiveness of various enforcement options
- The type of sanction that is permitted for the offence e.g. Penalty Notice / Prosecution only offences
- The availability of statutory defences, for example, due diligence

The decision to prosecute in individual cases will be made by named officers of the Council and in accordance with the General Enforcement Policy for Public Protection Services.

Only the following officers may authorise that particular course of action;

- Service Lead, Environmental Health.
- Lead Food/Feed Officer

These officers will be aware of the limits of their delegated power by reference to statutory Codes of Practice and any other relevant consideration, including the principles set out in this policy.

4.2 Primary Authority / Home Authority Principle

If an officer is considering action which may be contrary to any advice issued by the relevant Primary, Home and/or Originating authority they will ensure the matter is discussed with the relevant authorities before taking action. Most importantly, the Home or Primary authority must be consulted if the planned enforcement action impacts on aspects of a business's policy which has been agreed centrally by the decision-making base of the business.

In circumstances where an officer is considering action which may impact upon the operating practices of another/neighbouring local authority, they will ensure that the matter is discussed with the Lead Food Officer or Service Manager for the Local Authority concerned, and where appropriate, at the North-East Food Liaison Group (NEFLG) prior to initiating action. If the issue remains unresolved a request to consider the issue further will be submitted to the relevant regional Food Liaison Group/NETSA, with the aim of ensuring consistent enforcement. If this does not provide a satisfactory resolution, the Regional Liaison Group will seek further direction from the Competent Authority, Agency, or other Public Body responsible.

4.3 Interventions

The Council visits and inspects all premises where it has enforcement responsibility on a regular basis in line with Food/Feed Law Codes of Practice. The frequency of intervention is based on the inherent risk associated with the business operation and the level of compliance to the associated legislation governing the food/feed process.

In respect of the food hygiene inspection programme, the Council has adopted the national Food Hygiene Rating Scheme whereby the public can make an informed choice about where to eat based on the standards of food safety and hygiene found in food businesses at the time of their last hygiene inspection. The food hygiene rating is based on the risk rating score applied in line with the Food Law Code of Practice. Safeguards are in place for businesses through the adoption of a Brand Standard that governs the scheme, which details the Appeals process and grounds for reassessment and re-rating. Although the Food Hygiene Rating scheme does not directly impact the inspection programme, targeted interventions are priorities on those businesses achieving poor compliance scores, to improve compliance and ongoing conformance.

Again, for food hygiene interventions, an alternative enforcement strategy is used for 'low risk Category E' establishments. This allows the Food Authority an option to undertake alternative non-official interventions as appose to inspection or audits on their due target date, which in this case is once every 3 years. This currently involves sending out a targeted questionnaire to determine any changes in operating practices since the business was subjected to its last intervention and whether an official inspection is required to assess ongoing compliance and/or whether it needs to be brought back into the higher risk inspection programme.

Other official hygiene interventions conducted in food businesses in the Borough, include verification visits as an alternative to full/partial inspections and audits. These are conducted in compliant medium risk food businesses in accordance with the Codes of Practice, with hygiene rating scores of 4 or 5, and allow for a full check of hygiene standards to verify compliance to the Hygiene Regulations, allowing the risk rating score to roll over to the next due intervention target date.

The frequency of inspection of food/feed premises may be altered in the event that the Council is asked to bring forward the intervention of an establishment, following direction from the Food Standards Agency in response to an emerging incident or a national programme of work. Inspection frequencies are also affected by changes to the Codes of Practice and guidance issued by the Food Standards Agency.

4.4 Revisits following Interventions

Food/Feed businesses that fail to comply with significant statutory requirements, will be subject to appropriate enforcement action and revisits. In respect of food hygiene contraventions, a revisit will always be made to businesses that achieve a compliance score of 15 or higher for hygiene and/or structure and/or a confidence in management score of 20 or higher under the Food Law Code of Practice. Under the New Food Standards Delivery Model, inherent risk and compliance scores that identify a high priority intervention rating of 1-6 months, will also be subject to revisits and appropriate enforcement action to secure compliance.

Revisits in the main, will focus on the contraventions identified from the programmed intervention, with a view to remedying those as a priority. Any revisits undertaken at the request of the Food Business Operator to secure improvements in their food hygiene rating score under the Food Hygiene Rating Scheme will check not only those aspects identified during the initial inspection/intervention but will determine and assess the level of compliance overall to ensure a fair re-rating score can be applied.

Where a full re-rating inspection is conducted and deemed the most appropriate course of action due to significant changes in operating practices, compliance to all statutory requirements will be assessed again and the food business will be re-rated according to the Code of Practices and a new inspection frequency determined.

The timing of the revisit will be determined by the enforcement action taken as a result of the earlier intervention. The revisit will whenever practicable, be undertaken by the officer who carried out the original intervention. Revisits requested under the Food Hygiene Rating Scheme will always be unannounced. Further announced visits may be required to ensure that certain staff are present before making a final determination on any re-rating scores.

5.0 Enforcement Options

Enforcement options available, having considered all relevant information and evidence are:

- No action

- Informal action
- Statutory notices to improve or enforce compliance
- Fixed Penalty Notices / Penalty Notices as a means of sanction for non-compliance
- Simple caution
- Prosecution
- Prohibition procedures

Public enforcement bodies are duty bound under the Regulatory Enforcement and Sanctions Act 2008 which implemented the key recommendations from The Hampton Review, Reducing Administrative Burdens: Effective Inspection and Enforcement, published in March 2005 ("the Hampton Review"); The Macrory Review, Regulatory Justice: Making Sanctions Effective, published in November 2006 ("the Macrory Review"); and in so being must minimise the costs of compliance for business by ensuring that any action required is proportionate to the risks. As the law allows, Authorised Officers will take account of the circumstances of any case when considering appropriate action. Where practicable, particular care will be taken to work with small business and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense.

In certain circumstances prohibition or stop notices may be issued to prohibit the continued activity of the food/feed business or to prevent the onward supply of food/feed materials or products for reasons of safety or imminent risk to health.

Whenever a power or duty is exercised the Authorised Officer will identify themselves and provide a copy of their Official Powers Warrant and Authorisation on request. The Authorised Officer will explain, when asked, the applicable power or duty being exercised.

Where there are limitations on official powers to undertake necessary action to secure the safety of food/feed or where the need for enforcement action is apparent and evidence must be secured in line with Police and Criminal Evidence Act requirements, a Magistrates' Court warrant will be obtained to gain entry for the purposes of search and/or inspection.

The service will take an incremental approach to enforcement action in each circumstance. If a matter can best be resolved informally the officer will attempt to do so. This is termed a minor infringement, and the officer will give guidance on the corrective action needed and an appropriate timescale to achieve compliance. Such guidance may be reinforced by verbal or written warnings which will be a matter of record. Isolated minor infringements rarely lead to formal action. However, repeated incidents, multiple infringements or where previous compliance advice has been ignored may lead to formal action.

5.1 No action

Where an inspection or investigation reveals full compliance with the relevant food safety, food standards or feed legislation/Codes of Practice no further action will be required, other than to issue a written post inspection report as recommended in the

Food Law Code of Practice. Details of the fact that no enforcement action has been taken will be recorded on the premises record held by the service.

5.2 Informal action

Informal action may be given in the form of:

- Advice
- Verbal warnings
- Requests for action using letters
- Food Safety/Hygiene agreements

Informal action will be taken in the following circumstances:

- Where an act or omission is not serious enough to warrant formal action.
- Previous history of the organisation, enterprise or individual suggests that informal action will achieve compliance.
- Confidence in the organisation, enterprise or individual is high
- Where direction from the Primary Authority regulator provides assurance that the infringement is being managed through their contractual obligations
- Where a witness is unwilling to testify

Informal action will only be considered where the consequences of non-compliance will not pose a significant risk to public health or serious infringement of consumer rights.

Where informal action is to be taken following an intervention visit, an Authorised Officer will issue a written inspection report, or letter, which will differentiate clearly between matters which are legal requirements and matters which are recommendations.

Infringements of legal requirements and measures to be taken to enable compliance, including any timescales, will be clearly set out to allow them to be understood by the organisation, enterprise or individual receiving the communication.

In the event of more formal action being deemed necessary an Enforcement Policy decision form will be completed outlining the infringement and proposed course of action, taking into account the seriousness of the offence, public risk factors and history of compliance. The Enforcement Policy decision form will be signed off by the Lead Food/Feed Officer/Service Lead before instigating the enforcement action or for affirming a different formal route for action. Enforcement Policy Decision Form is attached at Appendix A.

5.3 Statutory Notices

Hygiene Improvement / Improvement Notices

Hygiene Improvement /Improvement Notices will only be issued when one or more of the criteria below apply:

- There are significant contraventions of food safety or food standards legislation.
- There is a lack of confidence in the proprietor to respond to an informal approach.
- There is a history of non-compliance.
- Standards are generally poor, and management has little awareness of requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.

Hygiene Improvement/Improvement Notices will relate to the risk to health and shall not be issued for minor technical contraventions.

Hygiene Improvement/Improvement Notices may only be issued by officers who have been properly authorised to do so. They shall only be signed by an authorised officer who has personally witnessed the contravention.

Authorised Officers must follow the Food and Feed Law Codes of Practice and Code of Practice guidance on the use of Statutory Notices. Officers serving Hygiene Improvement/ Improvement Notices should confirm the need for service of the notice with the Lead Food officer.

Hygiene Improvement/ Improvement Notices will not be served where there is a potential or imminent risk to food safety, in transient situations where an immediate result is required or where there is a breach in good hygiene practice but not a failure to comply with legislative requirements.

In some instances, publication of the service of Improvement Notices is required where they relate to specific legislative breaches. This will be determined on a case-by-case basis, in a manner fitting with the objectives of the outcome of the Notice as required under 6.6.15 of the Food Law CoP Practice Guidance.

Stop Notices

More civil enforcement sanctions are being brought in with the adoption of new Regulations. New and immerging food/feed products in England, not having been subject to scientific assessment can be prohibited from the market, until they have been authorised as safe by the Regulatory Authority responsible. Under Novel Foods Regulations Stop Notices can be issued to prevent the onward distribution of these materials until authorisation is obtained. Non-compliance can incur a fine of £200 per product as a non-criminal sanction.

Compliance Notices

Another type of civil sanction is Compliance Notices. These notices have different names and different conditions depending on the law under which they are made. In general, there will be a deadline to comply with the notice. If a business fails to comply with a Compliance notice, this can lead to criminal proceedings and court action. As with all statutory enforcement Notices, there are Appeal procedures in place allow the business the opportunity to make representations should they disagree with the Notice or conditions attached. Each Notice will specify how and where to submit Appeals, the timeframe involved and to which body the request must be submitted, namely a Tier Tribunal or Magistrates' Court depending on the legislation. As with Stop Notices, Compliance notices are available under a limited range of food and feed safety legislation currently, but it is likely, that in time, this civil sanction will become more widely available.

Authorised Officers must place realistic time limits on Statutory Notices, preferably agreed with the business proprietor where appropriate. Where possible the Authorised Officer will discuss with the food/feed business operator, the works required to ensure full compliance, taking account of the regulations concerned, the timeframe required for compliance and any appropriate statutory guidance.

Failure to comply with a Hygiene Improvement/ Improvement Notice, in general, will result in the instigation of court proceedings. Authorised Officers must therefore have sufficient evidence available to justify issue of these notices, be prepared to pursue non-compliance in the courts, and be satisfied that proceedings are likely to succeed.

Consideration will be given to other bodies that should be notified of any formal action taken and its outcome. This may include Primary, Home and Originating authorities.

Hygiene Emergency Prohibition Notices/Emergency Prohibition Notices

A Hygiene Emergency Prohibition Notice/Emergency Prohibition Notice shall only 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.
- An imminent risk of injury can be demonstrated, which may include evidence from experts such as a Food Analyst or Food Examiner.
- The guidance criteria specified in the Code of Practice, concerning the conditions when emergency prohibition may be appropriate, are fulfilled.
- Where a proprietor volunteers to close premises or cease to use any equipment, process, or treatment, but where there is either:
    - ➢ no confidence in the integrity of the food/feed business operator, or
    - ➢ the food/feed business operator is unwilling to confirm in writing his/her offer of a voluntary closure.

Hygiene Emergency Prohibition Notices / Emergency Prohibition Notices must only be signed by authorised, competent officers, holding appropriate qualifications, with relevant experience and who have witnessed the matters to which the notice relates. Officers serving Hygiene Emergency Prohibition Notices / Emergency Prohibition Notices should where possible confirm the proposal to serve the notice with the Lead Food Officer in accordance with the Council's standard operating procedures.

Where appropriate, expert advice will be sought from the Food Standards Agency, the UK Health Security Agency, or the Council's Food Examiner or Public Analyst.

Detention and Seizure Notices

A notice to detain or seize food/feed shall only be considered where there are grounds to suspect, or there is confirmation, that food/feed does not comply with safety requirements. The service of notices of detention or seizure will be in accordance with the Food Law Code of Practice and in accordance with the Council's standard operating procedures.

Notices of detention and seizure must only be signed by authorised, competent officers, having appropriate qualifications and experience. Officers serving Detention or Seizure Notices should confirm the need for service of the notice with the Lead Food/Feed Officer.

Where food/feed material already detained, needs to be seized and destroyed or used as evidence in criminal proceedings, an Authorised Officer will serve a 'Food Condemnation Notification', warning of the intention to take the food/feed before a Justice of the Peace to apply for its condemnation.

Following an investigation into the safety of the food/feed, any decision to issue a 'Withdrawal of Detention Notice' will be taken either by the original officer responsible for the issuance of the detention notice or, by another authorised officer with the relevant experience, to ensure the withdrawal is initiated within the relevant timescales.

Consideration will be given to other bodies which should be notified of any formal action taken and the outcome of that action.

Voluntary Procedures to remove food that is not suitable for human consumption from the food chain may at times be utilised, either at the instigation of the owner of the food or at the suggestion of the authorised officer. Voluntary surrender of food will be confirmed in writing to the food business operator prior to appropriate disposal of the food.

Remedial Action Notices and Detention Notices (Approved Premises)

A Remedial Action Notice or Detention Notice can be served in respect of businesses subject to approval under Assimilated Regulation (EC) 853/2004.

A Remedial Action Notice will be considered where:

- there is a failure of any equipment or part of an establishment to comply with requirements of the "Hygiene Regulations" as defined by regulation.
- there is a need to impose conditions upon or the prohibition of the carrying on of any process breaching requirements of the regulations or hampering adequate health inspection in accordance with regulations; and
- the rate of operation of the business is detrimental to its ability to comply with regulations.

The Notice will specify the works required to remedy the condition(s) identified above, the timescales for the works to be completed and the Appeal procedure.

Circumstances which might lead to the issue of a Detention Notice include:

- where there are indications or suspicions that food at an establishment is unsafe, and/or is believed not to have produced or processed in an Approved establishment in accordance with the necessary Hygiene Regulations. A Detention Notice under Regulation 10 will be issued to hold the food (at a location determined by the Enforcing Officer) to allow further investigation or assessment of the circumstances and proposed remedial action required. Further action may necessitate the taking of samples and the service of a Remedial Action Notice. Food Detained under this specific provision will be treated in the same way as the procedure above and following conclusion of the investigation with either be released by issuing a withdrawal notice or condemned by a Justice of the Peace and then appropriately disposed of.

When the action specified in a Remedial Action Notice has been taken by the food business operator, the notice will be withdrawn by further notice in writing.

Remedial Action or Detention Notices must only be signed by authorised, competent officers, having appropriate qualifications and experience. Officers serving these notices should confirm the need for service of the notice with the Lead Food Officer. Consideration will be given to other bodies which should be notified of any formal action taken and the outcome of that action.

5.4 Penalty Notices/Fixed Penalty Notices

In some cases, Food Law Authorised Officers can issue penalty notices, in effect imposing a fine directly on a business without the need for court proceedings. Such notices are available under a range of legislation, including laws relating to Novel Foods, Product Promotion and Placement, regulations relating to foods high in fat, salt & sugar, and nutritional labelling regulations which require the display of calorie information. The business can appeal to the court or a tribunal against the use of such a notice or against the level of penalty imposed.

The Fixed Penalty Notice fee will vary depending on the specific regulations and will be determined according to direction/guidelines issued by the official regulating body. (Food Standards Agency (FSA) /Department of the Environment, Food and Rural Affairs (DEFRA)

5.5 Simple Caution

The aim of a Simple Caution is to:

- Deal quickly and simply with less serious offenders
- Divert them from unnecessary appearance in the criminal courts.
- Reduce the chances of their re-offending.

It is intended that this Policy will ensure consistent application of cautioning decisions whereby:

- A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in the Ministry of Justice guidance issued 13 April 2015.
- The decision to offer a Simple Caution will be documented as a means of providing transparency to the process.
- The Simple Caution will only be administered by a "Cautioning Officer" namely the Operations Manager for the Food or Feed Law Service. or the Service Lead for the corresponding area. In all but exceptional circumstances, the caution should be administered in person by the "Cautioning Officer".
- The Simple Caution will be in writing. Two copies will be signed by the person receiving the caution, each copy will then be signed by the person administering the caution. One of the copies will be retained on file and the second copy issued to the person receiving the caution.
- The offender will be advised in writing of the proposal to issue a Simple Caution, advised to seek legal advice before accepting an offer and the arrangements for discharging the caution.
- Where the offender refuses to accept a caution or fails to return signed copies within 14 days, (if the caution has not been administered in person), then consideration will be given to the institution of legal proceedings.

The circumstances of the offence will be recorded on the appropriate premises file records and in a formal action file.

The Primary Authority, Home Authority and or Originating Authority will be notified of the details of the caution and where the offence relates to a complaint, the complainant will be notified that a Simple Caution has been issued.

5.6 Prohibition Procedures

Hygiene Emergency Prohibition Order/ Emergency Prohibition Order

An application for a Hygiene Emergency Prohibition Order/ Emergency Prohibition Order must be made to the Magistrates' Court within 3 days of the issue of a Hygiene Emergency Prohibition Notice/ Emergency Prohibition Notice.

Consideration will be given to other bodies which should be notified of any formal action taken and the outcome of that action.

5.7 Prosecution

The Local Authority always has the discretion to prosecute and the decision to prosecute or not will be based on the circumstances of each case. The criteria for prosecution must, in general, be related to risk or the seriousness of an offence, rather than being a punitive response to minor technical regulatory transgressions. All relevant factors in the Food and Feed Law Codes of Practice, Code for Crown Prosecutors and the Regulators' Code will be taken into account.

Each case will be considered on its merits but the circumstances likely to warrant prosecution may be characterised by one of the following criteria:

- The offence involves a breach of law such that public health, safety or wellbeing is put at risk, or there is a serious offence under food standards legislation.
- The offence involves a failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to comply.
- The offence involves a failure to comply in full or in part with the requirements of a Statutory Notice.
- There is a history of similar offences related to risk to the public, or food standards offences.

Before a prosecution proceeds the appropriate senior officer must be satisfied that the case is supported by sufficient relevant evidence, which is admissible, substantial, and reliable and is within the timeframe set for taking legal proceedings as specified in the specific legislation. The decision to instigate prosecution will be documented to provide transparency to the process and will be authorised by the relevant senior officer. (See Enforcement Policy Decision form at Appendix A)

The Food/Feed business will be notified within 14 days, following assessment of the evidence with the Disclosure Officer assigned to the case, whether the case is to be recommended for prosecution or another appropriate sanction.

For prosecutions to proceed there must be a reasonable prospect of conviction and it must be in the public interest to prosecute.

Guidance contained in the Food Law Code of Practice must be followed and all the following factors taken into account:

- The seriousness of the alleged offence.
- The previous history of the party concerned.
- The likelihood that a due diligence defence can be established.
- The ability of important witnesses and their willingness to co-operate.
- Willingness of the party to prevent recurrence of the problem.
- Probable public benefit of prosecution.
- Whether a Simple Caution, Hygiene Improvement Notice or imposing a prohibition might be more appropriate.
- Any explanation offered by the offender.

Investigation and decision making will not be unduly prolonged or delayed and witnesses, complainants or other parties will be kept informed of progress of the case.

Once a decision to instigate a prosecution has been taken, the matter will be referred without undue delay to the Local Authority Solicitor or such other officer as appropriate, who is authorised to conduct legal proceedings. The procedure for the submission of case reports will be followed.

Following a successful prosecution, a Prohibition Order may be imposed by the Court where it considers that the premises, equipment, or process put public health at risk. The Court may also, at its discretion, ban the proprietor or manager from managing a food business. If the Council intends to seek a Prohibition Order once a conviction has been secured, it must be able to satisfy the Court that the health risk condition is fulfilled and prior to the hearing the relevant officer will:

- Ensure that the business proprietor or his representative have been warned, in writing or orally, of the intention to seek a Prohibition Order and any evidence should be disclosed in advance.
- Check evidence of any previous convictions or warnings.

Any officer principally involved in the case will attend court in person, even when a guilty plea has been lodged, in order that further evidence can be given should the Court require it before granting a Prohibition Order.

The Primary Authority, Home Authority, and/or the Originating Authority as appropriate will be advised of legal proceedings to be taken and their outcome, in accordance with Code of Practice Guidance.

Where a Prohibition Order has been obtained against an individual, the Authorised Officer will notify the non-ministerial department under whose remit the legislative responsibility falls, namely the Food Standards Agency, as required under the Codes of Practice Guidance 6.7.6. This will ensure that other Food Authorities are notified. of the sanction to ensure the Prohibited person does not open a food business in another area.

5.8 Voluntary Closure

Voluntary procedures to remove a health risk condition may be used, instigated by the food business operator, when the food business operator agrees that there is an imminent risk of injury to health. An Enforcement officer may in specified circumstances suggest this option to the food business operator. Any voluntary closure agreement will be confirmed in writing by the food business operator or manager and the authorised officer, with an undertaking by the food business operator or manager not to re-open without the officer’s prior approval.

Authorised Officers must follow the standard operating procedure for the taking of such action and record and log the information on the premises record using the prescribed forms.

6.0 Council-run premises

Where contraventions are identified in premises where the Council is itself the proprietor of the food business, officers will carry out enforcement in a manner consistent with any other business. The following action will be taken:

- Following a food safety, food hygiene or food standards inspection, where minor contraventions are noted, the Authorised Officer will issue a written inspection report to the relevant service manager, which will differentiate clearly between matters which are legal requirements and matters which are recommendations. The report will also give timescales for compliance in respect of the legal requirements.

- In any instance where the criteria for service of a Hygiene Improvement Notice are met, the matter will be discussed with the Lead Food Officer or Service Lead – Environmental Health. Any Head(s) of Service with responsibility for the food business operation, will be notified in writing without undue delay, with copies to the Service Lead, Environmental Health, and written confirmation sought for compliance within a reasonable timescale. The matter will also be reported to the Director responsible for the Food Law Service.

- In any instance where an Authorised Officer finds food which is not suitable for human consumption, it is expected that voluntary procedures will generally be utilised to remove and where necessary dispose of the food. Written confirmation of voluntary surrender will be given to the relevant Head of Service. Should there be an instance which cannot be satisfactorily dealt with by means of voluntary procedures, the matter will be discussed with the Service Lead, Environmental Health without undue delay, and notified in writing to the Head(s) of Service responsible for the service area involved. Written confirmation of measures to ensure the security and disposal of the food where necessary, will be sought. The matter will be reported to the Director responsible for the Food Law Service.

- In any instance where the criteria for service of a Hygiene Emergency Prohibition Notice are met, or circumstances are such that prosecution criteria are met, then the matter(s) will be discussed with the Service Lead - Environmental Health immediately and reported to the Corporate Leadership Team without delay, in order to secure prompt effective action to achieve compliance /initiate formal proceedings as necessary.

7.0 Making a complaint /Appealing against a decision made under this Policy

You may wish to contact the Environmental Health Team for advice or to make a complaint.

Complaints in respect of food/feed will generally relate to:

- Hygiene and safety issues associated with food/feed businesses within the Borough,
- Food/feed safety matters which include product packaging & labelling, misleading claims, advertising, contamination, adulteration, and substitution offences which may have originated from businesses outside the Borough.
- Complaints directly relating to a food/feed material purchased within the Borough. Complaints of this nature include those affecting appearance, taste/smell and may be as a result of a physical, chemical, microbiological, or allergenic material contamination.

A complaint can be made in the following ways:

- Online using the Councils website: Report a food safety concern - South Tyneside Council
- via the Food Standards Agency weblink: For consumers - Report a food problem | Food Standards Agency
- By telephone on 0191 427 7000;
- By email to environmental.healthmailbox@southtyneside.gov.uk or
- Emailed direct to the Lead Food/Feed Officer from an Official Government body or Non-Ministerial Body or via notification from secure Intelligence sources

All complaint investigations will be performed in accordance with the FSA Code of Practice and Practice Guidance and the Primary Authority Scheme, as necessary.

Enforcement action will be in accordance with this Policy and the General Enforcement Policy for Public Protection Services.

South Tyneside Council has a corporate complaints procedure that explains how to make a complaint about any council service.

A formal complaint about the Food and Feed Law Service can be submitted as follows:

- Online using the Complaints form
- In person at South Shields Town Hall (Customer Service Centre) or Jarrow Town Hall (Customer Service Centre)
- By telephone on **0191 427 7000**
- By letter to South Tyneside Council, Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL

The Council's Customer Advocates Service can also provide assistance with complaints. They can be contacted on **0191 424 6028** or by emailing complaints@southtyneside.gov.uk.

See South Tyneside Council Complaints Policy for further information

This policy can be found on the Council's website and is available in hard copy form from Environmental Health, Level 2, Town Hall, Westoe Road, South Shields, Tyne and Wear, NE33 2RL (tel. 0191 4247000 or email environmentalhealth.mailbox@southtyneside.gov.uk

On request, this policy may be made available on tape, in Braille, large type, or in a language other than English.

APPENDIX A

FOOD/FEED ENFORCEMENT POLICY DECISION

Premises	
Offence	
Legislation	
Officer(s)	

Evidence of offence:

Is the evidence admissible, substantial and reliable:

Seriousness of offence:

Is there a history of previous offences.

What is the level of confidence in management of the business.

What are the consequences of non-compliance by the business. Subject to formal action / prosecution. Possible civil action and loss of reputation.

Matters to be considered for a due diligence defence:

Is it likely that a due diligence defence can be established.

Are there additional witnesses and are they reliable and willing to co-operate?:

Details of any action taken by person/business to prevent recurrence of problem:

<u>Action to be taken:(tick all that apply)</u>

Issue statutory notice because-

- There are significant contraventions of legislation……….
- There is a lack of confidence in the proprietor to respond to an informal approach………
- There is a history of non-compliance………
- Standards are generally poor and management awareness is poor……..
- Non-compliance could be potentially serious to public health………..
- Effective action is need asap to remedy conditions that are serious and deteriorating………
- There are grounds to suspect or confirmation that food doesn't comply with food safety requirements and a notice to detain or seize food is needed………

Use of prohibition procedures because:

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable…….

- An imminent risk of injury can be demonstrated, (may include evidence from experts such as a Food Analyst or Food Examiner)…......
- Guidance criteria specified in the CoP, for conditions when emergency prohibition may be appropriate, are fulfilled….
- The proprietor volunteers to close premises or cease to use equipment/ process, but there is no confidence in the integrity of the proprietor, or proprietor is unwilling to confirm in writing his/her offer of a voluntary closure……………..

Prosecution- because:

- There is a breach of law such that public health, safety or well being is put at risk, or there is a serious offence under food standards legislation……..
- There is a failure by the offender to correct an identified serious potential risk to food safety after being given a reasonable opportunity to comply……….
- There is a failure to comply in full or part with the requirements of a Statutory Notice………
- There is a history of similar offences related to risk to the public or food standards offences……..
- There is a breach of law such that public health, safety or well being is put at risk, or there is a serious offence under food standards legislation…………
- The offence involves a failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to comply………

- Is there a reasonable prospect of conviction …………
- Is it in the public interest to prosecute …………………

Is the matter appropriate for consideration of a formal caution as opposed to prosecution if accepted by the proprietor? :

- **Whilst there has been a breach, the matter is appropriate to be dealt with by means of a formal caution.**

Informal written warning because:

- Whilst there has been a breach, there have not been similar issues historically and the FBO is committed to ensuring that matters are rectified to prevent recurrence
- A warning is appropriate to prevent risk of recurrence although the evidence does not support formal action

Conclusion: **(detail action proposed)**

……………………………………………………………………………………………………..

……………………………………………………………………………………………………..

Officer signature …………………………….. **Date: …………..**

Manager signature…………………………… **Date ……………**

Additional enforcement options for Approved Premises:

Remedial Action Notice

There is:

- a failure of any equipment or part of an establishment to comply with requirements of the "Hygiene Regulations" …..…
- a need to impose conditions upon or the prohibition of the carrying on of any process which breaches regulations or hampers adequate health inspection
- the rate of operation of the business is detrimental to its ability to comply with regulations…….

Issue of a Detention Notice:

- there are indications/suspicions that food is unsafe and examination is necessary, including the taking of samples, including when a Remedial Action Notice is being served…

APPENDIX B

FOOD ENFORCEMENT POLICY IN RELATION TO RELEVANT LEGISLATION AND THE USE OF FIXED MONETARY PENALTY PROVISIONS

The Calorie Labelling (Out of Home Sector) (England) Regulations 2021

The Food (Promotion and Placement) (England) Regulations 2021

The Novel Foods (England) Regulations 2018

South Tyneside Council has adopted this policy on deciding when to issue a fixed monetary penalty for failure to comply with an improvement notice as an alternative to prosecution under the relevant food legislation and in the case of Novel Food contraventions, to issue a fixed monetary penalty following contraventions to the specified EU Regulations.

It applies in relation to any decision made by the Council in its capacity as Food Authority under s.5 of the Food Safety Act 1990

Contents

1.0 Enforcement Generally

General principles of enforcement of food safety legislation are set out in South Tyneside Council's Food and Feed Law Enforcement Policy. The policy is drafted in accordance with the Council's overarching Statement of Enforcement Policy and General Enforcement Policy for Public Protection Services, and embraces the principles set out in the Regulators' Code issued by the Office for Product Safety and Standards. The Food and Feed Law Enforcement Policy sets out procedures for the use of formal enforcement actions which take account of all Codes of Practice and 'The Code for Crown Prosecutors'.

Enforcement officers by necessity as professional officers have considerable discretion in decision-making and initiating enforcement action. All engagement between officers and businesses, whether formal or informal, contributes to securing compliance with the law and our enforcement policies aid the professional judgements and decision-making of officers helping to ensure both consistent and effective enforcement.

2.0 Introduction

South Tyneside Council has adopted this policy on deciding when to issue a fixed monetary penalty for failure to comply with an improvement notice as an alternative to prosecution under the 'relevant food legislation'. It applies in relation to any decision made by the Council in its capacity as Food Authority under s.5 Food Safety Act 1990. It has a duty to provide reports from time to time on enforcement action taken in this regard, detailing when fixed monetary penalties have been imposed (except where they have been over-turned on Appeal) and details of any that have been discharged.

For clarity, "relevant food legislation" means: -

1. Calorie Labelling (Out of Home Sector) (England) Regulations 2021 ("The Calorie Regulations").
2. Food (Promotion and Placement) (England) Regulations 2021 ("The Food Regulations").
3. The Novel Foods (England) Regulations 2018

3.0 Sanctions

The relevant food legislation provides that food authorities may impose fixed financial penalties. In respect of the Calorie Labelling (Out of Home Sector) (England) Regulations 2021 and the Food (Promotion and Placement) (England) Regulations 2021 this penalty is £2,500 for failure to comply with an improvement notice as an alternative to criminal prosecution. In respect of the Novel Foods (England) Regulations, the fixed monetary penalties relate to placing unauthorised Novel food materials on the market without having obtained prior Authorisation. The penalty for which is £200 for an individual or £200 for a body corporate.

The Council will determine what is the most appropriate and effective sanction and whether it is appropriate to impose a financial penalty or prosecute having due regard to South Tyneside Council's General Statement of Enforcement Policy[1] and the Food and Feed Law Enforcement Policy.

Other types of Enforcement Action that may be taken

In appropriate circumstances consideration will be given to less formal action such as warning letters or advice in an effort to secure compliance and will be done so in accordance with the Food and Feed Law Enforcement Policy.

4.0 Government Guidance

The Department of Health and Social Care has published guidance in respect of the Calorie Labelling (Out of Home Sector) (England) Regulations 2021, to direct food authorities on implementation of the Regulations [2] as well as illustrating to those food businesses affected by the regulations how to apply the principles and requirements in practice. These Regulations came into force from 6 April 2022.

Additionally guidance has been published for the Food (Promotion and Placement) (England) Regulations 2021[3], providing similar direction to enforcement authorities and affected businesses alike. A factor to note is that the promotional restrictions on the sale of high food, salt, and sugar products, to which these regulations relate, have been deferred until the 1st October 2025, however the product placement elements, restricting the location of these products on retail sale, came into force on 1 October 2022.

As the Competent Authority for overseeing and implementation of the GB Novel Food register under assimilated EC 2015/2283, the Food Standards Agency has issued guidance on the application and authorisation process for businesses and Enforcement Officers alike. Novel foods authorisation guidance | Food Standards Agency

All foods that were previous Authorised by the European Food Safety Agency prior to 1st January 2021 remain valid for use in Great Britain. Foods not already on the register, and deemed to be Novel, must be removed from the market until they have been subjected to scientific assessment through the submission of a valid application and determined as being safe to be included on the Register.

It must be noted that these guidance notes should be read in conjunction with the Regulations themselves and that any text should not be taken as an authoritative statement or interpretation of the law, as only the courts have the power to determine regulatory compliance based on the evidence presented to them on a case-by-case basis.

[1] General Statement of Enforcement Policy - South Tyneside Council
[2] Calorie labelling in the out of home sector: implementation guidance - GOV.UK (www.gov.uk)
[3] Restricting promotions of products high in fat, sugar or salt by location and by volume price: implementation guidance - GOV.UK (www.gov.uk)

5.0 Circumstances in which a Fixed Monetary Penalty is likely to be imposed under the relevant Food Legislation

In each case and in accordance with the Food and Feed Law Enforcement Policy, a number of matters will be taken into account when determining whether to impose a fixed monetary penalty as a civil sanction following non-compliance with an Improvement Notice served under the Food Safety Act 1990, to secure compliance with these regulations or in the case of Novel foods, to determine whether a fixed monetary penalty is the most appropriate course of action as appose to a Compliance Notice or Stop Notice.

Where the Food Business has a Primary Authority relationship overseeing the relevant food legislation, and having already notified the Primary Authority of the non-conformance in accordance with the Primary Authority Statutory guidance[4] prior to service of the Improvement Notice, further notification of the impending financial sanction to be imposed will be made in accordance with the guidance, where necessary.

If there are relevant recent food safety and hygiene convictions associated with the Food Business Operator or the Food Business, these will also be considered when deciding whether a Fixed Penalty Notice is the most appropriate course of action. On the basis of this and evidential weight, it is more likely that the matter will be referred for legal proceedings for offences under section 10 of the Food Safety Act 1990.

Other considerations include:

- Previous breaches of relevant food legislation or the Food Safety Act 1990

- Previous convictions, having regard to:
  - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
  - the time that has elapsed since the conviction.

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider / community impact
- Obstruction of the investigation
- Record of poor compliance

Given the nature and size of businesses falling within scope of the Regulations, it is anticipated that the vast majority will seek direction on compliance from their national and corporate leads and that service of Improvement Notices, with the option to appeal through the First-tier Tribunal system, will for all but a minority, ensure satisfactory compliance to the relevant legislation, avoiding application of this financial sanction.

[4] Primary Authority Statutory Guidance (publishing.service.gov.uk)

6.0 Circumstances in which a Fixed Monetary Penalty is unlikely to be imposed under the relevant Food Legislation

- No previous or no relevant/recent breaches
- No previous convictions or no relevant/recent convictions
- Steps taken voluntarily to remedy the contravention
- High level of co-operation with the investigation, beyond which would automatically be expected
- Good general record of compliance based on previous known history
- Good character and / or exemplary conduct
- Self-reporting, co-operation, and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the breach
- Serious medical conditions requiring urgent, intensive, or long-term treatment and supported by medical evidence

7.0 Notice of Intent

Where an authorised officer proposes to impose a fixed monetary penalty under the relevant food legislation following non-compliance with the Improvement Notice conditions, that officer must serve on that person a notice of what is proposed ("a notice of intent"). The notice must include the following:

a. The grounds for the proposal to impose the fixed monetary penalty.
b. The amount of the penalty
c. A statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received; and
d. Information as to:
    - the effect of that discharge payment
    - the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received; and
    - the circumstances in which an authorised officer may not impose the fixed monetary penalty (including any defences relating to the offence in relation to which the notice is served).

Before imposing by notice a fixed monetary penalty on a person in relation to an offence under the Novel Foods (England) Regulations 2018, the authorised officer must be satisfied beyond reasonable doubt that the person has committed the offence and that based on the potential health/food safety risks involved, that a Compliance Notice or Stop Notice would not be the most appropriate course of action to secure compliance to take.

8.0 Making Representations and Objections

A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the Food Authority in relation to the proposed imposition of the fixed monetary penalty. The Council will review the penalty in light of any representations received.

9.0 Contents and Service of Final Notice

If the person who has received the notice of intent does not discharge liability within 28 days, the Food Authority may serve a final notice imposing a fixed monetary penalty. The Food Authority may not service a final notice on a person where it is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates. If a food authority serves a final notice, it may not serve any other notice under the relevant food legislation in relation to the offence.

The final notice must include the following information:

a. The Amount of the fixed monetary penalty
b. The grounds for imposing the penalty.
c. How payment can be made.
d. The period of 28 days within which payment must be made.
e. The early payment discounts and late payment penalties
f. Rights of appeal
g. The consequences of non-payment

If a person who was served with a notice of intent, then makes representations or objections concerning that notice within the 28-day time limit, that person may discharge the final notice by paying 50% of the penalty within 14 days beginning with the day on which the final notice was received.

10.0 Appeals

The person receiving the final notice, or a fixed monetary penalty under the Novel Foods (England) Regulations 2018, may appeal against it on any of the following grounds:

a. That the decision was based on an error of fact.
b. That the decision was wrong in law.
c. That the decision was unreasonable.
d. That the decision was wrong for any other reason.

Appeals are made to the First-tier Tribunal and the final notice is effectively suspended pending the determination or withdrawal of the appeal. The Tribunal have the power to withdraw, confirm or vary the final notice. The final notice is suspended awaiting outcome of the Appeal decision.

11.0 Non-payment of Fixed Monetary Penalty and Recovery of Payments

The Food (Promotion and Placement) (England) Regulations 2021

The penalty must be paid within 28 days of receipt of the final notice. If the penalty is not paid within 56 days, then the amount payable will be increased by 50%. In the case of an appeal, the penalty (whether varied or confirmed by the First-tier Tribunal) is payable within 14 days of the determination of the appeal, and if it is not paid within 14 days, the amount of the penalty is increased by 50%. The Council can recover any penalty imposed as if it is payable under a court order.

The Calorie Labelling (Out of Home Sector) (England) Regulations 2021

The penalty must be paid within 28 days of receipt of the final notice. If the penalty is not paid within 28 days, then the amount payable will be increased by 50%. In the case of an appeal, the penalty must be paid within 14 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 14 days the amount of the penalty is increased by 50%. The Council can recover any penalty imposed as if it is payable under a court order.

The Novel Foods (England) Regulations 2018

The penalty must be paid within 56 days of receipt of the notice. If the penalty is not paid within 56 days, then the amount payable will be increased by 50%. In the case of an appeal, the penalty must be paid within 28 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 28 days the amount of the penalty is increased by 50%. The Council can recover any penalty imposed as if it is payable under a court order.

12.0 Criminal Proceedings

If a notice of intent for a fixed monetary penalty is served on any person, then no criminal proceedings for the offence may be instituted against that person (in respect of the act or omission giving rise to the penalty) before 28 days from the date of receipt.

If that person discharges liability through full payment of penalty monies due, that person may not at any time be convicted of the offence in relation to that act or omission.

The appropriate action in relation to non-payment of any fixed monetary penalty will not be to institute criminal proceedings, but to recover the penalty as if it is payable under a court order.

In the case of fixed monetary penalties imposed for Novel Food offences, it must be noted that a person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

13.0 Local Authority Duty to Publish Guidance

Each food authority must publish guidance containing information as to:-

1. the circumstances in which a fixed monetary penalty is likely to be imposed under the relevant? Regulations,
2. the circumstances in which it may not be imposed,
3. the amount of the penalty,
4. how liability for the penalty may be discharged and the effect of discharge, and
5. a person's rights to make representations and objections and their rights of appeal.

This duty will be discharged by providing the relevant information on the Council's dedicated Food Safety webpage.

……………………………………………………………………………………………………