



East
Northamptonshire
Council

Environmental Services and Community Safety Enforcement Policy



May 2019

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Consultees

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Links to other documents

Document	Link
Empty Property Strategy	www.east-northamptonshire.gov.uk/emptypropertystrategy
Private Sector Housing Grants Policy	www.east-northamptonshire.gov.uk/pshgpolicy
Investigation Manual	Internal document
Food safety and health and safety service plan	https://www.east-northamptonshire.gov.uk/downloads/file/7007/food_safety_and_health_and_safety_service_plan
Statement Licensing Policy	www.east-northamptonshire.gov.uk/statementoflicensingpolicy
Gambling Policy	www.east-northamptonshire.gov.uk/gamblingstatement

Public Health Funeral Policy	www.east-northamptonshire.gov.uk/publichealthfunerals
Wheeled Bin Policy	www.east-northamptonshire.gov.uk/wheeledbinpolicies

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1.0 Introduction

1.1 East Northamptonshire Council's Environmental Services and Community Partnerships Teams inspect, provide advice, guidance and enforce a number of different pieces of legislation. Environmental Services deals with the following areas:

1.2 Health Protection Team

- Food Safety
- Health and Safety
- Licensing
- Infectious Diseases
- Health Promotion

1.3 Waste Management Team

- Littering
- Dog Fouling
- Fly Tipping
- Wheeled Bin Policy Enforcement
- Abandoned Vehicles
- Graffiti
- Stray Dogs

1.4 Environmental Protection Team

- Environmental Permitting
- Contaminated Land
- Statutory Nuisances (Odour, Noise, Light, Accumulations, Filthy and Verminous Premises, Dust Smoke etc.)
- Public Health
- Private Sector Housing (Housing disrepair, Disabled Facilities Grants etc.)
- Houses in Multiple Occupation
- Public Health Funerals

1.5 Community Partnerships Team deals with the following area:

- Anti-Social Behaviour

1.6 This Enforcement Policy sets out the general principles and approach which East Northamptonshire Council will follow when enforcing legislation to which Environmental Services is responsible for. It will be used in conjunction with all relevant statutory Codes of Practice and guidance issued by Central Government Departments such as Department of Environment Farming and Rural Affairs (DEFRA), Food Standards Agency (FSA), Health and Safety Executive (HSE) and Department of Communities and Local Government (DCLG) and the Home Office among others.

1.7 The above will be achieved both through education, by providing advice and by enforcement of regulations. Securing compliance with statutory requirements and using enforcement powers, including prosecution is an important part of this enforcement policy.

1.8 East Northamptonshire Council will ensure that all appointed officers are competent and are trained in the use of this policy. East Northamptonshire Council will work with all

other related external agencies to include but not limited to Central Government Departments such as DEFRA, FSA and HSE, in addition, to other agencies such as Public Health England, Environment Agency, Fire Authority, Northamptonshire County Council and the Police as well as working with internal council departments such as planning and building control sections to ensure joined up regulation.

- 1.9 East Northamptonshire Council regards prevention as better than cure and as such offer information and advice to those we regulate and seek to secure compliance avoiding bureaucracy or excessive cost. Individuals and businesses are encouraged to work with the Council and to employ best practice into their normal working practices.
- 1.10 East Northamptonshire Council will operate in accordance with the Regulatory Reform Act and the Primary Authority requirements, where a partnership exists.
- 1.11 East Northamptonshire Council will operate in accordance with the Regulators Compliance Code.

2.0 Policy outcomes

2.1 Outcomes and links to the corporate outcomes

2.2 The policy contributes to the following corporate outcomes:

- Good quality of life in East Northamptonshire – cleaner, safer, prosperous, healthier and sustainable
- High quality service delivery
- Effective partnership working
- Effective management

3.0 The Purpose and Method of Regulation and Enforcement

3.1 The need for enforcement can occur for a number of reasons and may stem from a lack of knowledge or a deliberate or negligent act. The term enforcement has a wide meaning and applies to all dealings between East Northamptonshire Council and those on whom the law places a duty.

3.2 The purpose of enforcement is to:

- Ensure that immediate action is taken where there are serious risks to the health and safety of members of the public, which includes consumers, employees, tenants etc.
- Promote and achieve sustained compliance with the law;
- Ensure that those who breach the legal requirements are held to account, which may include bringing alleged offenders before the courts.

3.3 Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, or to assist such claims.

3.4 East Northamptonshire Council has a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer businesses and individual's information, mediation opportunities and advice, both face to face and in writing. This may include a warning that in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may also

serve legal notices, which include Hygiene Improvement Notices, Hygiene Emergency Prohibition Notices and Orders, Abatement Notices, Fixed Penalty Notices (FPNs) in addition to undertaking seizures, issuing of simple cautions², revoking licences and permits and prosecutions.

- 3.5** Simple cautions and prosecutions are important ways to bring individuals and businesses to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, East Northamptonshire Council will use one of these measures in addition to, revoking a licence or approval, issuing an improvement or emergency prohibition notice etc.
- 3.6** Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, East Northamptonshire Council will have regard to the principles of enforcement set out in this statement.
- 3.7** East Northamptonshire Council will use discretion in deciding when to investigate or what enforcement action may be appropriate. East Northamptonshire Council will set down in writing the decision-making process which officers will follow when deciding on enforcement action, and make this publicly available. Officers must utilise this policy when determining enforcement action. Such judgements will be made in accordance with the following principles and in accordance with the *Enforcement Concordat, the Regulators Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006*.

4.0 The Principles of Enforcement

- 4.1** East Northamptonshire Council believes in firm but fair enforcement of the law. This should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of enforcement action; *transparency* about how the regulator operates and what those regulated may expect; and *accountability* for the regulator's actions. These principles should apply both to enforcement in particular cases and to the management of regulatory and enforcement activities as a whole.

5.0 Proportionality

- 5.1** Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties, expect the action taken by the enforcing authority to be proportionate to the seriousness of any breach. In reaching any decision, many criteria must be considered including the:
- seriousness of offence;
 - the past history (if any);
 - confidence in management (if applicable);
 - the consequence of non-compliance;
 - Likely effectiveness of the various enforcement options.

²A simple caution is a statement by an officer, which is accepted in writing by the duty holder, that the duty holder has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought. 'Simple cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence. Enforcing authorities should take account of current Home Office guidelines when considering whether to offer a simple caution.

5.2 Having considered all relevant information and evidence, the choices for action are to:

- take no action;
- take informal action such as a verbal or written warning and mediation;
- use statutory notices;
- use simple cautions;
- prosecute;
- And/or carry out work in default.

6.0 Consistency

6.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Duty holders managing similar risks can expect a consistent approach from East Northamptonshire Council in the advice tendered; the use of enforcement notices; decisions on whether to prosecute; and in the response to incidents and complaints.

6.2 East Northamptonshire Council recognises that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude and competence of management, any history related to the business, previous enforcement action and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.

6.3 An investigation manual is in place is regularly updated and provides a consistent approach for all officers across the service when undertaking enforcement action. This manual includes the processes for issuing simple cautions, obtaining a warrant, conducting PACE interviews and completing prosecution case files.

7.0 Targeting

7.1 Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious problems. Action will be primarily focused on breaches of the law or those directly responsible for the risk and who are best placed to control it.

8.0 Transparency

8.1 Transparency is important in maintaining public confidence in the Council's ability to regulate. It is about helping those regulated and others, to understand what is expected of them and what they should expect from the Council. It means making clear why an officer intends to take and has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.

8.2 Transparency is an integral part of the role of the enforcement function. Staff are trained and procedures developed to ensure that:

- Where action is required, it is clearly explained (in writing, if requested) why that action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements;
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required;
- A written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

9.0 Accountability

- 9.1** Regulators are accountable to the public for their actions. This means that East Northamptonshire Council has policies and standards (such as the enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints. The Council will ensure that officers who are authorised to initiate enforcement action are competent, suitably qualified and have relevant experience. All officers shall be fully conversant with the requirements of this policy and any service level enforcement policies.
- 9.2** East Northamptonshire Council has procedures in place for dealing with comments and handling complaints, information is available on the council's website: <http://www.east-northamptonshire.gov.uk/customerfeedback>.
- 9.3** Every legal notice issued will be accompanied, where appropriate with appeal notes to detail how an appeal against the notice can be made and within what timeframe.

10.0 Enforcement Options

- 10.1** The type of enforcement action to be taken is determined on a case by case basis and in accordance with the most appropriate pieces of legislation. The appendices to this policy detail the specific enforcement types of each of the teams within Environmental Services in greater detail.

11.0 Authorisation of Officers

- 11.1** The Council's Scheme of Delegation details which officers have been authorised to enforce the specific piece of legislation. The Scheme of Delegation is contained within the Council Constitution and is available on the Council's website. <http://www.east-northamptonshire.gov.uk/constitution>.

12.0 No Action

- 12.1** In exceptional circumstances, contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a trader has ceased to trade. The decision to take no action will be recorded detailing the decision making process.

13.0 Written warning and advice

- 13.1** For some contravention's the offender will be sent a firm but polite letter clearly identifying the contravention's, giving advice on how to put them right and include a deadline by which this must be done. Failure to comply could result in a notice being served.

13.2 Informal action should be considered when:

- Past history is good;
- The contravention is insufficiently serious to warrant formal action;
- Confidence in the individual/management;
- Non-compliance will not pose a significant risk to public health.

14.0 Enforcement Notices

14.1 Where appropriate a formal legal notice will be issued to rectify a contravention and to prevent further occurrences. Each piece of legislation provides different types of notices that can be served to seek compliance. Where a legal notice is served details on how to appeal against the notice are provided where applicable and these vary depending on the legislation.

15.0 Works In Default

15.1 In certain circumstances where a legal notice has been served but not complied with the legislation allows the Council to undertake the works in default. The Council will take such steps so as to comply with the notice and the costs of doing so plus the officer time will be recharged to the person the notice was served on. Where this has been served on a number of properties the costs will be equally divided. Should the costs of the works not be repaid the council will follow its debt recovery procedure to reclaim the costs or submit a Local Land Charge against the property.

16.0 Simple Cautions

16.1 A simple caution will be considered by East Northamptonshire Council in the following circumstances:

- there is sufficient evidence to prove the case;
- the offender has admitted the offence;
- the offender has agreed to be cautioned;
- The offence has not been committed by the offender before.

16.2 Reference should be made to Home Office Circular 30/2005 and officers should consider the use of simple cautions as an alternative to prosecutions.

<http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>

16.3 The purpose of the simple caution is to:

- offer a proportionate response to low level offending where the offender has admitted the offence;
- deliver swift, simple and effective justice that carries a deterrent effect;
- record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- reduce the likelihood of re-offending;

- increase the amount of time officers spend dealing with more serious crime and reduce the amount of time police officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

16.4 In considering whether a Simple Caution is appropriate, the investigating officer must consider the following facts:

- Is there sufficient evidence of the suspect's guilt to meet the Evidential Test (as outlined in the Director's Guidance)?
- Is the offence indictable only?
- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)?
- Is it in the public interest to use a Simple Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors.
- Is the suspect 18 years or over? Where a suspect is under 18, a reprimand or final warning would be the equivalent disposal.

16.5 *Note: An admission of the offence, corroborated by some other material and significant evidential fact will be sufficient evidence to provide a realistic prospect of conviction. This corroboration could be obtained from information in the crime report or obtained during the course of the investigation.*

16.6 A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example if intent is denied or there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered).

16.7 If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution. To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:

- a. There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.
- b. The suspected offender must admit the offence.
- c. The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

16.8 The persons authorised to issue the cautions will be as per the scheme of delegation.

17.0 Prosecution

17.1 East Northamptonshire Council will use discretion in deciding whether to bring a prosecution. However, the following general guidance must be read and interpreted having full regard to the following tenets:

17.2 Reasonableness – is the proposed course of action reasonable in terms of cost, likely outcome and appropriateness of offence?

Ultra Vires – does legal or delegated authority exist for the proposed course of action and is it vested in the Council or any individual officer concerned? If formal action is contemplated, have all the legal and evidence requirements been met?

17.3 The Crown Prosecution Service Code – this code sets out two clear principles or tests, which should be considered before any prosecution is embarked upon. These are the evidential test and the public interest test. The evidential test requires there to be a “realistic prospect of conviction” based upon reliable and admissible evidence. The public interest is concerned with balancing the possible “for” and “against” factors, which may exist. This may mean balancing the cost of legal action against the likely outcome, the seriousness of the offence against a possible disproportionately harmful effect on the defendant, and so on.

17.4 The decision to initiate Court proceedings will be taken by the Head of Environmental Services following consultation with the investigating and legal officers. The guidelines contained in any relevant Codes of Practice must be taken into consideration and the investigating officer must be able to clearly show there is relevant, admissible, substantial and reliable evidence to support legal action. The Council’s Legal Services will be consulted as necessary and where appropriate the case will be referred to the relevant committee.

17.5 Prosecution will, in general, be restricted to those persons who blatantly disregard the law, refuse to achieve basic minimum requirements or who place the public at risk. The circumstances which warrant prosecution will normally be characterised by one or more of the following:

- An alleged offence involves a flagrant breach of the law such that public health, safety and wellbeing are at risk
- The seriousness of the alleged offence will take into regard the risks or harm to public health and identifiable victims
- disregard of public health for financial reward
- the alleged offence involves a failure to correct an identified serious risk and the offender has been given reasonable opportunity to comply with the lawful requirements of an enforcement officer
- the offence involves the 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 public health
- there are any overriding factors, which must be taken into account

18.0 Prosecution of Individuals

18.1 Criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, we will also consider any part played in the offence by the officers of the Company, including Directors, Managers and the Company Secretary.

18.2 Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where a company who had a notice served on them are in the process of being liquidated or dissolved further consideration by legal services will be undertaken in order to determine the appropriateness of undertaking the prosecution.

18.3 Prosecution will be restricted to persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the Authority and who put the public at serious risk.

18.4 Regard should be had for the Crown Prosecution Service's Code for Crown Prosecutors which gives guidance on the decision making process for prosecutions.
<https://www.cps.gov.uk/publication/code-crown-prosecutors>.

18.5 Circumstances which are likely to warrant prosecution are where the:

- alleged offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk.
- alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- a history of similar offences related to risk to public health.

18.6 The decision to prosecute must be taken at the earliest opportunity.

18.7 When circumstances have been identified which may warrant a prosecution all relevant evidence and information will be considered to ensure a consistent, fair and objective decision be made. Suspected offenders will be invited to offer an explanation before proceedings are commenced.

18.8 Before a prosecution proceeds the officer will ensure that there is relevant, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must also be a realistic prospect of conviction; a bare prima facie case is insufficient.

18.9 Once the decision to prosecute has been made the matter should be progressed referred to the Legal Officer without undue delay.

18.10 When a proprietor or manager has been convicted of an offence the Court may prohibit them from the management of a food business. The prosecution must draw the Court's attention to this power. To enable the Court to make a Hygiene Prohibition Order the officer must provide the necessary information and evidence to support this action. The circumstances which may lead to this action include repeated serious offences, blatant disregard for health risks or putting the public at risk by knowingly using unfit food.

18.11 Where a Hygiene Prohibition Order is issued the officer shall notify the Chartered Institute of Environmental Health as soon as possible.

19.0 Public Interest Factors

19.1 East Northamptonshire Council will consider the following factors in deciding whether or not to prosecute:

- seriousness of the offence
- foreseeability of the offence or the circumstances leading to it
- intent of the offender, individually and/or corporately
- history of offending
- attitude of the offender
- deterrent effect of a prosecution, on the offender and others

- personal circumstances of the offender
- likelihood of the offender being able to establish a due diligence defence

19.2 These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. We will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

20.0 Witnesses

20.1 The suitability of witnesses and their willingness to give evidence may be another deciding factor in whether to prosecute or not. Where a prosecution may result in unjustified risk or harm to witnesses or complainants, advice will be sought from Legal Services and relevant external bodies on whether or not to proceed.

21.0 Actions by the Courts

21.1 In cases of sufficient gravity, for example where serious injury or ill health has resulted, consideration will be given to requesting the Magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 28 (above) are to be used, but will include consideration of the sentencing powers of the Magistrates' Court.

22.0 Penalties

22.1 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain offences are:

- Magistrates' Courts; up to 6 months imprisonment and/or £20,000 fine;
- Crown Court: up to 2 years imprisonment and/or an unlimited fine.

22.2 The Council will always seek to recover the costs of investigation and Court proceedings.

23.0 Publicity

23.1 East Northamptonshire Council will make arrangements for the annual publication of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking the law of which we have taken a prosecution for. East Northamptonshire Council will also consider making publicly available information on revoking of licences and approvals, improvement and emergency prohibition notices served.

23.2 East Northamptonshire Council will also consider publicising any conviction which could serve to draw attention to the need to comply with food safety requirements, or deter anyone tempted to disregard their duties under food safety law.

24.0 Primary Authority Partnership Scheme and its Enforcement Provisions

24.1 When we have come to the decision to take enforcement action against a business and:

- 1) The business operates in more than one Local Authority and has chosen to have a registered Primary Authority Partnership under The RES Act; and
- 2) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.

24.2 We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify the Primary Authority of the action we propose to take. The Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to the Better Regulation Delivery Office (BRDO).

Appendix A – Food Safety (Food Safety and Hygiene (England) Regulations 2013)

A.1 In addition to the General Enforcement Policy the following section applies to food safety enforcement specifically.

A.2 Enforcement Notices

A.2.1 These include hygiene improvement and hygiene emergency prohibition notices and are served to require offenders to rectify the contravention or to the cease contravening activities.

A.3 Remedial Action Notices and Detention Notices

A.3.1 The Remedial Action and Detention Notices are only applicable in premises where approval has been issued.

A.3.2 Non compliance in approved establishments should initially be remedied through a graduated enforcement approach and Hygiene Improvement and Hygiene Prohibition Notices should also be considered.

A.3.3 Circumstances that may lead to the issue of a Remedial Action Notice being issued include:

- failure of any equipment or part of an establishment to comply with the 'Hygiene regulations';
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate inspection in accordance with the regulations;
- Where the rate of operation of the business is detrimental to its ability to comply with the regulations.

A.3.4 Circumstance which may lead to the issue of a Detention Notice include:

- Where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

A.4 Hygiene Improvement Notices

A.4.1 Before an Authorised Officer recommends service of a Hygiene Improvement Notice they must be satisfied of one or more of the following:

- that formal action is in proportion to the risk to public health;
- there is a record of non-compliance with breaches of the food hygiene regulations;
- That informal action will not be successful.

A.4.2 A Hygiene Improvement Notice shall only be signed by a properly authorised officer who has witnessed the contraventions and is satisfied that the foregoing criteria are met.

A.4.3 When deciding upon the time period in which the Hygiene Improvement Notice must be complied with, the Officer must discuss with the Proprietor or his representative to seek agreement on a suitable period. If agreement cannot be reached then the Officer must

consider the cost of the works required, the ease of remedying the non-compliance and the availability of suitable equipment before determining the period for compliance.

A.4.4 Failure to comply with a Hygiene Improvement Notice will in general result in prosecution and officers must therefore be able to justify their actions in accordance with the legislation, this policy and any other relevant guidance.

A.5 Hygiene Emergency Prohibition Notices

A.5.1 When considering the service of a Hygiene Emergency Prohibition Notice the officer may initially seek assistance from the Health Protection Manager

A.5.2 Consideration must be given to the consequences of not taking immediate and decisive action if the health risk condition is fulfilled and there would be no confidence in the offer made by a proprietor to voluntarily close the premises or cease an operation.

A.5.3 Any accepted voluntary closure must be confirmed in writing by the proprietor and in the knowledge that the voluntary closure will stay in effect until the officer is satisfied that the premises no longer present a serious risk to public health or food safety.

A.5.4 Guidance on circumstances when an Emergency Prohibition Notice might be served can be found in the Food Law Code of Practice.

A.5.6 The use of Section 12 FSA 1990 Emergency Prohibition Procedures are only necessary in specialised cases relating to specific processes or treatments. Further guidance can be found in the Food Law CoP.

A.6 Seizure and Detention

A.6.1 East Northamptonshire Council have powers to seize unwholesome or contaminated food to prevent them causing harm to consumers. When goods are seized an officer will always leave an appropriate receipt. When food is seized East Northamptonshire Council will produce it before a magistrate as soon as possible for them to confirm the seizure and consider the food unfit. If the magistrate does not condemn the food, it will be returned to the owner who will be entitled to compensation for any loss suffered.

A.6.2 Unless immediate action is required, any decision to detain food must be taken after discussion with the owner or person in charge of the food and, if appropriate the manufacturer.

A.6.3 Place of detention will be a case of professional judgement and must ensure the ongoing safety, security and physical care of the food.

A.6.4 Detained food should not be left in the care of any person who may be prosecuted for an offence under food law.

A.6.5 The quantity and nature of food to be detained will determine the storage facilities required. Small quantities may be held in facilities at the offices. Storage of larger quantities will need to be discussed with the Health Protection Manager.

A.6.6 Prior to seizing any food consideration must be given to whether the food in question can be made safe for consumption by treatment or processing.

A.6.7 Any treatment or processing agreed must be subject to a written undertaking by the owner or person having control of the food.

A.7 Withdrawal of Approval

A.7.1 An authorised officer will only initiate procedures to withdraw an establishments approval or conditional approval if other enforcement options have been considered, including suspension of the approval and if circumstances exist in accordance with following

- the officer identifies serious deficiencies or
- has to stop production repeatedly and the food business operator is not able to provide adequate guarantees regarding future production

A.7.2 In order to warrant revocation of an approval, the individual or organisation must meet one or more of the following:

- engaged in fraudulent activity;
- deliberately or persistently breached legal obligations, which were likely to cause harm to others;
- deliberately or persistently ignored written warnings or formal notices;
- obstructed an officer during their duties;
- Endangered, to a serious degree, the health, safety or well being of the public.

Appendix B – Health and Safety (Health and Safety at Work etc. Act 1974 and any regulations made thereunder)

B.1 In addition to the General Enforcement Policy the following section applies to health and safety enforcement specifically.

The purpose of health and safety enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- Ensure that duty holders who breach health and safety requirements, and directors or managers, who fail in their responsibility, may be held to account, which may include bringing alleged offenders before the courts.

B.2 Investigation

B.2.1 As with prosecution, East Northamptonshire Council uses discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. This is detailed in East Northamptonshire Council's Food and Health and Safety Service Plan.

B.2.2 Investigations are undertaken in order to determine:

- causes;
- whether action has been taken or needs to be taken by the proprietor to prevent a recurrence and to secure compliance with the law;
- the available and most appropriate enforcement options

B.2.3 To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. East Northamptonshire Council recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

B.2.4 East Northamptonshire Council will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, in which case those reasons should be recorded.

B.2.5 In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, East Northamptonshire Council will take account of the following factors;

- The severity and scale of potential or actual harm;
- The seriousness of any potential breach of the law;
- The duty holder's past health and safety performance;
- The enforcement priorities;
- The wider relevance of the event, including serious public concern.

B.3 Enforcement Notices

B.3.1 Notices include improvement notices and prohibition notices and are served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention.

B.4 Improvement Notices

B.4.1 Before an Authorised Officer recommends service of an Improvement Notice they must be satisfied of one or more of the following:

- There are significant contraventions of health and safety legislation and they are likely to continue.
- Where one or more health and safety contraventions have occurred and they are likely to be repeated.
- There is a lack of confidence in the business/proprietor's organisation of health and safety management.
- The business/proprietor has a history of non-compliance.
- Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice.

B.4.2 An Improvement Notice shall only be signed by a properly authorised officer who has witnessed the contraventions and is satisfied that the foregoing criteria are met.

B.4.3 When deciding upon the time period in which the Improvement Notice must be complied with, the Officer must discuss with the Proprietor or his representative to seek agreement on a suitable period. If agreement cannot be reached then the Officer must consider the cost of the works required; the ease of remedying the non-compliance and the availability of suitable equipment before determining the period for compliance.

B.4.4 Failure to comply with an Improvement Notice will in general result in prosecution and officers must therefore be able to justify their actions in accordance with the legislation, this policy and any other relevant guidance.

B.5. Prohibition Notices

B.5.1 When considering the service of a Prohibition Notice the officer may initially seek assistance from the Health Protection Manager.

B.5.2 A Prohibition Notice will only be considered in the following circumstance:

- When an officer is of the opinion that an activity (or activities) carried on at a premises involve or will involve a risk of *serious personal injury*. The number of people affected by the risk is not relevant.
- Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will only be served where a risk of serious personal injury is such as to require action to be taken without delay to control that risk.

Consideration must be given to the consequences of not taking immediate and decisive action if the risk of serious personal injury exists.

B.6 Seizure

B.6.1 East Northamptonshire Council have powers to seize unsafe equipment to prevent them causing harm to people. When goods are seized an officer will always leave an appropriate receipt.

B.7 Death at Work

B.7.1 Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

B.7.2 If in the course of their health and safety investigation, the enforcing authorities find evidence suggesting manslaughter or corporate manslaughter, they should pass it on to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, the enforcing authorities will normally bring a health and safety prosecution in accordance with this policy.

Appendix C – Environmental Protection & Public Health

C.1 In addition to the General Enforcement Policy the following section applies to areas of enforcement within Environmental Protection and Public Health.

C.2 Environmental Protection Act 1990 Abatement Notices

C.2.1 Where a statutory nuisance has been established the Council may serve an abatement notice on the person responsible for the nuisance or the owner or occupier of the premises. The notice may simply require the nuisance to stop and not recur or specify steps to be taken to abate the nuisance. Someone who receives an abatement notice has a period of 21 days to appeal to a Magistrates Court against it.

C.2.3 The following are situations that can constitute a statutory nuisance.

- a. any premises in such a state as to be prejudicial to health or a nuisance;
- b. smoke emitted from premises so as to be prejudicial to health or a nuisance;
- c. fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- d. any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- e. any accumulation or deposit which is prejudicial to health or a nuisance;
- f. any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- g. any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- h. artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- i. noise emitted from premises so as to be prejudicial to health or a nuisance;
- j. noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street
- k. any other matter declared by any enactment to be a statutory nuisance;

C.2.4 Where a complaint of a statutory nuisance has been made the complainant is required to evidence the occasions they are disturbed in their premises on a diary sheet. This is essential for determining whether there is the potential for statutory nuisance and how the case should be progressed and provides evidence should the case go to court.

C.2.5 If a statutory nuisance has been determined the legislation requires the local authority to serve an abatement notice on the person responsible to rectify the situation and to prevent a recurrence.

C.2.6 Failure to comply with an abatement notice is a criminal offence and the offender could be subject to a fine of up to £5,000 for a domestic premises and £20,000 for a commercial or industrial activity.

C.2.7 An amendment under the Clean Neighbourhoods and Environment Act 2005 allows a local authority that is satisfied that a statutory noise nuisance exists can issue a “minded to” on the person responsible. This advises them that a statutory nuisance exists and that the service of the notice is to be delayed for 7 days in order to work with them to resolve this issue. If a statutory nuisance or lack of action is determined the local authority will serve an abatement notice on the person responsible without further warning.

C.2.8 A breach of an Abatement Notice may also result in an application for a warrant to seize items from the premises in order to abate the nuisance. Seizures of noise making equipment will then be followed up with a prosecution of the breach of the notice and a confiscation order from the magistrate's court to have the equipment destroyed.

C.3 Notices Served under the Control of Pollution Act 1974

C.3.1 Notices served under this legislation apply to noisy activities associated with demolition and construction. This seeks to reasonably control the activity through the use of 'best practical means' rather than attempt to prevent disturbance as the works are usually necessary. Prior consent can be sought from the Council to carry out the works, that may cause disturbance, or the Council can use reactive powers to impose conditions on the activity. Such as restricting working hours, siting of equipment and appropriate silencing.

C.3.2 Failure to comply with a condition attached to a prior consent or a notice is a criminal offence and on conviction an offender may be subject to maximum fine of £10,000.

C.4 Permitted Processes

C.4.1 The Environmental Permitting Regulations 2010 require certain sectors of industry that by virtue of their activities release emissions to the air, land or water to be regulated. Requirements for regulation are specific to each industrial sector and a permit with set conditions may be required. A business that requires a permit cannot operate until one is in place and must adhere to all conditions contained within. Where a business fails to adhere to the conditions enforcement powers are available to ensure the permitted installation is controlled.

C.4.2 **Variation Notices:** Are issued where a business has notified the authority that changes have been made and that as such the permit needs to be varied in order to reflect the new changes. Variation Notices are issued with the new permit and advise that the previous permit is no longer enforceable.

C.4.3 **Improvement Notices:** Requiring steps to be taken to adhere with the conditions. Timescales within the notice will vary depending on the works that are required. Non compliance may result in a prosecution and/or revocation notice.

C.4.4 **Revocation Notice:** Where an authority feels it is necessary to revoke the permit in order to protect the environment a notice will be issued to the operator, a revocation notice suspends the permit and the operator will not be able to continue the process the permit related to.

C.5 Private Water Supplies

C.5.1 The local authority is required under the Water Industry Act 1991 and the Private Water Supply Regulations 2009 to keep the private water supplies within the district under review. All supplies that have a commercial interest for example rented property or operates a business that uses a private supply are required to have a risk assessment completed. Larger supplies that supply to a number of properties must also under go the risk assessment process. This will determine the frequency of sampling that is required to ensure the water is suitable for human consumption. Where a supply fails sampling a

notice will be served on the person having control of the supply and will only be lifted once remedial action has been completed and the supply has passed resampling.

C.6 Filthy and Verminous Premises

C.6.1 The Public Health Act 1936 requires a local authority to take action when a property is deemed to be filthy, verminous or unwholesome. A notice served under this act requires the person responsible, who is usually the owner or tenant to take steps to clear and cleanse the property and where a vermin infestation is present to treat to the satisfaction of the local authority. Unlike other pieces of legislation there is no appeal process for this notice. Should a notice not be complied with the council may undertake works in default and recover the costs from the person responsible.

C.7 Anti Social Behaviour, Crime and Policing Act 2014

C.7.1 The above act replaces a number of powers that have been available to the council and Police for dealing with anti social behaviour within communities.

C.7.2 **Community Protection Notices (CPN)** – The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti social behaviour which spoils the community's quality of life. This power will be used by the council and the police in consultation with each other. If the behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent and continuing nature and is unreasonable a written warning will be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising what the consequences will be if it does not stop.

C.7.3 If the behaviour continues a CPN will be issued, which will specify what is to be stopped or undertaken in order to avoid further anti social behaviour. Failure to do so may result in works in default being undertaken by the council and the costs reclaimed from the person responsible. A breach of a CPN is a criminal offence, a fixed penalty of £100 may be issued and/or a prosecution. A fine of £2,500 for an individual or up to £20,000 for businesses may be issued by the courts.

C.7.4 **Closure Powers** – The purpose of this power is to allow the council to quickly close a premises which is being used, or likely to be used, to commit nuisance or disorder. The council can issue a closure notice requiring closure of the premises for 48 hours or a closure order for up to six months. The council must be satisfied that nuisance to the public will occur in the next 48 hours or there will be disorder near those premises. For a closure order the council must be satisfied that there will be disorderly, offensive or criminal behaviour, serious nuisance to the public from that premises.

C.7.5 A closure notice is issued by the council however a closure order must be sought from the courts. The breach of the notice or the order is a criminal offence. Breach of a notice carries a penalty of up to 3 months in prison and a breach of an order up to six months in prison. Both carry an unlimited fine for residential and non-residential premises.

C.7.6 Other powers – the legislation includes a number of other powers, which include but are not limited to the following:

- Public Spaces Protection Orders
- Civil Injunctions
- Criminal Behaviour Order

The council will use these powers where it is deemed appropriate on a case by case basis and in conjunction with the police and other relevant agencies.

Appendix D – Licensing

D.1 In addition to the General Enforcement Policy the following section applies to licensing enforcement specifically.

D.2 Introduction

D.2.1 East Northamptonshire Council's policy is to protect the safety, welfare and wellbeing of all persons and animals subject to licensing legislation within East Northamptonshire.

D.2.2 East Northamptonshire Council enforces Licensing legislation in the district of East Northamptonshire. This Enforcement Policy Statement sets out the general principles and approach that East Northamptonshire Council will follow when enforcing Licensing Legislation. It will be used in conjunction with guidance issued from the Home Office, Police, Fire Authorities, Department of Culture, Media and Sport and Department of Transport (DFT). In addition, the Statement of Licensing policy complements this policy and provides more detailed information on enforcement roles, information sharing and decisionmaking.

D.2.3 The Council has the responsibility to advise, determine and enforce a number of licensing regimes. The areas covered by this policy include:

Alcohol, Regulated Entertainment and Late Night Refreshment	Sale and Supply of all alcohol, whether for consumption on or off the premises. Regulated Entertainment involving Music, Singing and Dancing, Indoor Sports, Films, Plays; and Late Night Refreshment after 23:00 hours.
Animal Health and Welfare	Animal Boarding Establishments, Dangerous Wild Animals, Exhibition of Animals, Dog Breeding Establishments, Selling Animals as Pets, Hiring out horses, Game Dealers.
Charitable Collections	House to House and Street Collections.
Gaming	Gambling Premises, Small Society Lotteries, Gaming Machines.
Hackney Carriage and Private Hire Vehicles	Hackney Carriage and Private Hire vehicles, drivers, proprietors and operators.
Miscellaneous	Sex Establishments, Scrap Metal Dealers, Street Trading.

D.2.4 The scheme of delegation and relevant policies will determine the correct route for decision making with respect to licensing matters as this can vary from officer decisions to licensing panels.

D.3 Enforcement Notices

D.3.1 Notices such as suspension are served to remove the licence until the reasons for suspension have been rectified. These will be considered where there is a risk to safety of the public or the welfare of animals. These are also applied automatically for non payment of the licence fee for Alcohol Licences.

D.4 Revocation of Licences or Approvals

D.4.1 In order to warrant revocation of a licence, the individual or organisation must meet one or more of the following criteria:

- Engaged in fraudulent activity
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices
- Obstructed an officer during their duties
- Endangered, to a serious degree, the health, safety or well being of people or animals.

D.5 Review of Licence

D.5.1 A Licensing Act 2003 licence can be reviewed at any time at the request of the public or a statutory body as specified under the legislation. As a result of the review the licence is placed before the Licensing Panel which is able to vary, revoke and/or suspend the licence, remove the designated premises supervisor, or remove licensable activities from a licence. In making decisions with respect to these licences the Statement of Licensing Policy will be referred to by the Licensing Panel in addition to the enforcement policy.

D.5.2 A Licensing Act 2003 premises licence can have an expedited review when a senior police officer has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both); On receipt of the application and the certificate the licensing authority must within 48 hours consider whether it is necessary to take interim steps pending determination of the review of the premises licence – the authority must in any event undertake a review within 28 days of receipt of the application. The authority may:

- modify the conditions of the premises licence;
- exclude of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
- remove the designated premises supervisor from the licence; and
- suspend the licence.

D.6 Penalty Points, Written warning and advice

D.6.1 For some contravention's the offender will be sent a firm but polite letter clearly identifying the contravention's, giving advice on how to put them right and include a deadline by which this must be done. Failure to comply could result in further enforcement action being taken.

D.6.2 Taxi matters also allow the administering of penalty points for breaches of conditions, bylaws and legislation to drivers and operators of hackney carriage and private hire vehicles.

D.7 Anti Social Behaviour, Crime and Policing Act 2014

D.7.1 **Community Protection Notices (CPN)** – The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti social behaviour which

spoils the community's quality of life. This power will be used in consultation with the Police. If the behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent and continuing nature and is unreasonable a written warning will be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising what the consequences will be if it does not stop.

D.7.3 If the behaviour continues a CPN will be issued, which will specify what is to be stopped or undertaken in order to avoid further anti social behaviour. Failure to do so may result in works in default being undertaken and the costs reclaimed from the person responsible.

D.7.4 **Closure Powers** – The purpose of this power is to allow the council to quickly close a premises which is being used, or likely to be used, to commit nuisance or disorder. The council can issue a closure notice requiring closure of the premises for 48 hours or a closure order for up to six months. The council must be satisfied that nuisance to the public will occur in the next 48 hours or there will be disorder near those premises to issue a closure notice. For a closure order the council must be satisfied that there will be disorderly, offensive or criminal behaviour, serious nuisance to the public from that premises. A closure notice is issued by the council, however, a closure order must be applied for from the courts.

Appendix E – Housing

E.1 In addition to the General Enforcement Policy the following section applies to housing enforcement specifically.

E.2 Local Government (Miscellaneous Provision) Act 1982 Protection of Buildings

E21 Section 29 of this Act enables a local authority to carry out work to effectively secure a building against unauthorised entry or to prevent it from becoming a danger to public health.

E22 A local authority may serve a notice that they propose to undertake work or may carry out work immediately in urgent circumstances. In each case the cost of the work is recharged on the owner of the property.

E23 In view of the nature of this enforcement action authority has been delegated to officers for both the service of notices and to carry outworks.

E.3 Statutory Notices, Orders and Directions

E31 A Statutory Notice, Order or Direction will be the first formal sanction issued by the Council. The Statutory Notices, Orders and Directions detailed below may be appropriate in any of the circumstances listed or combination thereof:

E.4 Housing Act 2004, Part 2 Licensing of Houses in Multiple Occupation

- There are significant contravention(s) of legislation;
- There is a lack of confidence in the successful outcome of an informal approach;
- There is a history of non-compliance with informal action;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequence of non-compliance could be potentially serious to public health;
- Effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

E.5 Housing Act 2004, Part 1- Housing Conditions

E51 Part 1 of the Housing Act 2004 made significant changes to how houses are inspected and expanded the range of enforcement powers available to officers. All properties are inspected to identify the presence of hazards, there are 29 hazard categories. A risk rating system the Housing Health and Safety Rating System (HHSRS) is used to determine if the hazards in the property are category 1 or category 2. Every local authority has a duty to deal with category 1 hazards when they have been identified. East Northamptonshire Council will also deal with category 2 hazards, taking enforcement action where appropriate.

E52 East Northamptonshire Council has adopted Section 49 of the Housing Act 2004, which allows a local authority to charge for the service of enforcement notices under the Act. The charge for the service of a notice is based on the time spent by the officer in

preparing and serving the notice, as a result there is no fixed cost. Hazards Awareness Notices, which do not carry a requirement for completion and therefore be liable for prosecution or for works in default to be undertaken have not been included in this charging regime. Owner occupiers are also exempt from these charges.

E.53 The range of notices that are provided in the Act include the following, all can be used for category 1 or category 2 hazards or combined if both hazards are present:

- Hazard Awareness Notices (Section 28 and 29)
- Improvement Notices (Section 11 and Section 12)
- Prohibition Orders (Section 20 and 21)

E.54 The legislation also gives a local authority emergency powers, these include:

- Emergency Remedial Action Notice (Section 41)
- Emergency Prohibition Order (section 43)

E.55 All appeals for Housing Act 2004 notices are now heard by the Residential Property Tribunal. Details of how to appeal are contained in the notes that accompany the notice.

E.56 Before a legal notice is served the following should be considered:

- The significance of the contravention(s) of legislation;
- The confidence in the successful outcome of an informal approach;
- Any history of non-compliance with informal action;
- If the standards are generally poor with little management awareness of statutory requirements;
- The consequence of non-compliance could be potentially serious to public health;
- If the effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

E.6 Housing Act 1985, Sections 265 Demolition Orders (As amended by Section 46 of the Housing Act 2004)

- The dwelling contains one or more category 1 hazards;
- Repair of the dwelling is not a financially viable option;
- There is a lack of confidence in the owner satisfactorily resolving the problem.

E.7 Housing Act 2004, Part 4 Chapter 1 - Interim and Final Management Orders – Houses in Multiple Occupation

- There is no reasonable prospect of it being licensed in the near future or;
- The consequence of non-compliance could be potentially serious to the health and safety of any occupants or visitors to the premises

E.8 Housing Act 2004, Part 4 Chapter 2 Interim and Final Empty Dwelling Management Orders

- The dwelling is wholly unoccupied; and
- There is no reasonable chance that it will be occupied in the near future
- There is a lack of confidence in the successful outcome of an informal approach;
- There is a history of non-compliance with informal action;
- For more information please view the [Empty Property Strategy](#)

E.9 Housing Act 2004 – Section 139 Overcrowding notices (HMOs only)

- E.9.1 The Council will serve a notice under this section where;
- There are significant contravention(s) of legislation;
 - There is a lack of confidence in the successful outcome of an informal approach;
 - There is a history of non-compliance with informal action;
 - The consequence of non-compliance could be potentially serious to public health;
 - Effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

E.10 Housing Act 1985 – Part 10 Overcrowding

- E.10.1 The standards for determining if a property (not HMO) is statutory overcrowding were not updated in the Housing Act 2004 and Part 10 of the 1985 Act is still in force. If a property is found to be overcrowded both the occupier and the landlord/owner will be issued with a notice requiring both parties to take reasonable steps to resolve the overcrowding problem. For tenants this can mean actively seeking a larger property, through the bidding process for social housing or private rented sector, for landlords/owners assisting the tenants to find a larger property, allow them to leave their tenancies early or if necessary instigate eviction proceedings.

E.11 Environmental Protection Act 1990 – Section 80 Nuisances

- E.11.1 The Council will consider serving Notices under this section where:
- The significance of the contravention(s) of legislation;
 - The confidence in the successful outcome of an informal approach;
 - Any history of non-compliance with informal action;
 - If the standards are generally poor with little management awareness of statutory requirements;
 - The consequence of non-compliance could be potentially serious to public health;
 - If the effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

E.12 The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

- E.12.1 This legislation requires all companies that operate as either letting agents or property management agents to be a member of a Government approved Redress Scheme. Where it is understood that a company is not a member of the scheme the Council will investigate and determine whether they are a member.
- E.12.2 If, on the balance of probabilities, a person has failed to be a member of a scheme a notice of intent to impose a fine will be served by the Council. The fine is set at £5,000. If after 28 days no appeal has been lodged and they are still not a member of a scheme a final notice imposing the fine will be issued.

E.13 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - Statement of Principles

E.13.1 This statement is required under Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) and relates to matters that East Northamptonshire Council (the Council) must have regard to in determining the amount of any penalty charge issued under Regulation 8 of the same Regulations.

E.13.2 The Regulations allow the Council to issue Penalty Charge notices where a relevant landlord has failed to take all reasonable steps to comply with a Remedial Notice. Such notices allow 28 days to:

1. Fit one or more smoke alarms in an occupied rented property.
2. Fit a carbon monoxide detector to a room with a solid fuel burning combustion appliance.
3. Take steps to check that each smoke or carbon monoxide alarm required by Regulations is working correctly at the start of a new tenancy.

E.13.3 In determining the amount of any penalty charge, the Council takes into account the following principles:

a. Financial penalty

Landlords issued with a Penalty Charge Notice have already been given 28 days to comply with statutory requirements that they should have complied with at their properties prior to such a notice being served. It is not enough to recover the cost of completing the works as this in itself does not deter inaction that puts tenants' lives at risk. The financial penalty should be set at an amount to ensure that those landlords who fail to comply with the law are sufficiently penalised.

The amount of financial penalty is set at £1,000 for the first offence and £5,000 for any subsequent offence, including where it can be established that the landlord has been issued with a Penalty Charge Notice from another local authority under the same provisions.

This amount is modified by the mitigating provisions noted below.

b. Mitigating factors

The Council agrees to reduce the amount of the financial penalty element of the Penalty Charge in the following circumstances:

1. Early payment - Where a relevant landlord issued with a Penalty Charge Notice makes payment within 14 days of the service date, the financial element of the Penalty Charge will be reduced by £500.
2. Discretion by the Head of Environmental Services in agreement with the Chair of Policy and Resources Committee.

E.13.4 A landlord may write to the Head of Environmental Services within 28 days of the date of the Penalty Charge Notice being served, requesting a review. Such a request should include such information as appropriate as to why he/she should not be required to pay the Penalty Charge. The Head of Environmental Services, in agreement with the Chair of

the Policy and resources Committee, may confirm, vary or withdraw the Penalty Charge Notice.

E.14 Housing and Planning Act 2016 - Civil Penalties

E14.1 A civil penalty is a financial penalty imposed by a Local Authority on an individual or organisation as an alternative to prosecution for certain offences under the Housing Act 2004. The offences a civil penalty can be issued for include:

- Failure to comply with an Improvement Notice (Section 30)
- Offences in relation to the licensing of Houses in Multiple Occupation (Section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (Section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (Section 234) – a penalty can be issued for **each separate** breach

E14.2 Civil penalties are intended to be used for those who are in breach of one or more of the above offences. The maximum penalty that can be imposed is £30,000. The amount of penalty imposed is determined by East Northamptonshire Council on a case by case basis. In determining the appropriate level of penalty we have regard to the following contained within the statutory guidance below.

E.14.3 The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) Severity of the offence - The more serious the offence, the higher the penalty should be.
- b) Culpability and track record of the offender - A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) The harm caused to the tenant - This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d) Punishment of the offender - A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not fulfilling their responsibilities.
- e) Deter the offender from repeating the offence - The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set

at a high enough level such that it is likely to deter the offender from repeating the offence.

f) Deter others from committing similar offences - While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) Remove any financial benefit the offender may have obtained as a result of committing the offence - The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

E.14.4 Procedure for imposing a Civil Penalty is set out in Schedule 13A of the Housing and Planning Act 2004 and is summarised below:

1. The Local Authority must give the person notice of its proposal ('Notice of Intent') to impose a financial penalty, this notice must set out the following:
2. The amount of the proposed financial penalty
3. The reasons for proposing the penalty and
4. Information about the right of the person to make representations

E.14.5 The notice of intent must be given no later than 6 months after the local authority has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

E.14.6 A person who has received a Notice of Intent may make written representations to the local authority and must be done within 28 days of the notice. After 28 days the local authority will determine whether to impose the penalty and for what amount, a final notice will be issued which requires the penalty to be paid within 28 days. This final notice will set out:

1. The amount of financial penalty
2. The reasons for imposing the penalty
3. Information about how to pay the penalty
4. The period for payment of the penalty 28 days
5. Information about rights of appeal
6. The consequences of failure to comply with the notice

E.14.7 The Local Authority can withdraw a Notice of Intent or final notice at any time or reduce the amount specified in either the notice of intent or final notice at any time. A person who receives a final notice has a right to appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of penalty. The deadline to pay the penalty imposed on the final notice will be suspended until any appeal has been determined.

E.14.8 Where a person or company fails to pay the civil penalty, the local authority will refer the case to County Court for an Order of that Court. If necessary, county court bailiffs will be instructed to enforce the order and recover the debt as set out in the statutory guidance.

E14.9 Any income received by a Local Authority from a civil penalty can be retained by the Local Authority provided that it is used to further the local authority's statutory function in relation to their enforcement actions covering the private rented sector as specified in the regulations.

E15 Civil Penalty Matrix

E15.1 Determining the level of penalty

To determine the level of financial penalty East Northamptonshire Council has developed a 4 tier assessment process (the matrix) in accordance with the Housing and Planning Act 2016. Case Officers will use the matrix to determine the level of financial penalty.

E15.2 Verification

An Officer will apply the matrix to each offence; offences will be subjected to a verification process by a senior member of staff to the Case Officer. If the Officers impose a penalty within £1000 of each other, the Case Officer's original penalty will be formalised. If the difference between the Officer's penalties is more than £1000, the penalty will be referred to Senior Officers / Managers for consideration.

Band 1: Severity of offence

The severity of offence has been broken down into three levels. The more serious the offence, the higher the penalty will be:

- **Severity Level 1:** these are low - moderate offences such as failure to display the name and contact details of the licence holder as required under the Management of Houses in Multiple Occupation (England) Regulations 2006 and HMO regulation breaches.
- **Severity Level 2:** these are serious offences such as failing to deal with serious hazards, such as damp and mould.
- **Severity Level 3:** these are severe / extreme offences such as failure to provide adequate fire detection in a HMO / failure to adhere to a notice / operating a HMO without a licence.

Severity Level	1	2	3
Level of penalty	£300	£600	£1200

Band 2: Culpability and harm

Culpability and Harm will be dealt with by two separate assessments; culpability and track record of the offender and the harm caused to the tenant.

Culpability and track record of the offender:

Culpability will consider the record of the offender, previous breaches of their obligations, deliberately avoiding their responsibility as a landlord and being ignorant of relevant facts relating to the operating of their business as a landlord.

Category 1 penalties will only be used for 1st time offences. In cases where multiple breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 are identified, all penalties will be calculated under Category 1 if it is a first offence.

Category 2 penalties will be used for subsequent offences

Culpability has been separated into three levels:

- **Severity level 1:** these are low offences committed with little fault/mitigating factors, for example because:
 - i. Significant efforts were made to address the risk although they were inadequate on this occasion
 - ii. There was no warning/circumstances indicating a risk
 - iii. Co-operation with the investigation
 - iv. Voluntary steps taken to address issues e.g. submits a licence application
 - v. Willingness to undertake training
 - vi. Willingness to the Council's landlord accreditation scheme (if applicable)
 - vii. Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
 - viii. No previous convictions
 - ix. Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.
 - x. Good character and/or exemplary conduct
- **Severity Level 2:** these are medium offences that are committed through act or omission which a person exercising reasonable care would not commit
- **Severity Level 3:** these are very high offences where the offender intentionally breached, or flagrantly disregarded, the law and knew their actions were unlawful

Culpability

Severity Level	1	2	3
Category 1: 1st offence	£300	£600	£1200
category 2: Subsequent offence(s)	£900	£1800	£3600

The harm caused to the tenant

Harm will consider the harm or the potential harm the offence did or could have caused the tenant; the higher the risk of harm, the higher the penalty. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

Harm has been separated into six levels:

- **Severity Level 0:** these are offences that present no risk of harm
- **Severity Level 1:** these are offences that present a low to moderate risk of harm
- **Severity Level 2:** these are offences that present a serious risk of harm
- **Severity Level 3:** these are offences that present a severe / extreme level of harm and have scored a band C under the Housing and Health Safety Rating System (HHSRS)
- **Severity Level 4:** these are offences that present a severe / extreme level of harm and have scored a band B under the HHSRS
- **Severity Level 5:** these are offences that present a severe / extreme level of harm and have scored a band A under the HHSRS

Harm

Severity Level	0	1	2	3	4	5
Level of penalty	£0	£300	£1000	£3000	£5000	£10000

Band 3: Punishment / Deterrent

Band 3 will consider:

- **Punishment of the offender:**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

- **Deter the offender from repeating the offence:**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences:**

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Band 3 will give consideration to all 3 components and apply a multiplier to the amount already accrued. The amount of the fine must be sufficient to have a real economic impact on the offender to act as a sufficient deterrent to reoffend. Furthermore, the penalty must be sufficient to deter others. This band will be applied based upon the size of the portfolio of properties held or managed by the offender; landlords will be required to provide evidence as requested by the Local Authority to determine the portfolio size. If the landlord fails to cooperate with this request Severity level 5 will automatically be applied.

Punishment / deterrent have been separated into five levels:

- **Severity Level 1:** Portfolio 1
- **Severity Level 2:** Portfolio 2 - 5
- **Severity Level 3:** Portfolio 6-14
- **Severity Level 4:** Portfolio 15-100
- **Severity Level 5:** Portfolio 101+

Punishment / Deterrent

Severity Level	1	2	3	4	5
Level of penalty*	X 2	X 3	X 4	X5	X6

*Severity level: No multiplier will be used in the following circumstances:

- Severity, Culpability and Harm have all scored level one or below and
- It is a landlords first offence (this includes penalties in other LA areas), and
- The penalty relates to a single offence and not multiple offences.

Band 4: Removal of Financial Gain

This assessment will remove any financial benefit the offender may have obtained **as a result of committing the offence**. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Consideration will be given to the total penalty versus the income received during the “offence period”. The “offence period” will commence from the earliest date the landlord was made aware of the offence. The level of penalty will be awarded to ensure the penalty removes the financial gains made by the offender as a result of committing the offence. The landlord will be required to provide evidence as requested by the Local Authority to determine the financial gain. If the landlord fails to cooperate with this request Severity level 5 will automatically be applied.

Removal of financial gain has been separated into five levels:

- **Severity Level 1:** No financial gain
- **Severity Level 2:** Financial gain between £1 - £1000
- **Severity Level 3:** Financial gain between £1001 - £2499
- **Severity Level 4:** Financial gain between £2500 - £4999
- **Severity Level 5:** Financial gain between £5001 - £10000

Removal of Financial Gain

Severity Level	1	2	3	4	5
Level of penalty*	£0	£1000	£2500	£5000	£10000

Worked example:

Failure to comply with an Improvement Notice for a landlord that owns/manages one property and receives £500 per month rent. The breach has lasted for 4 months and it is the first offence:

Band 1: Severity of Offence

Failure to adhere to a Notice – Level 3: **£1,200.00**

Band 2: Culpability and harm

Culpability (is offence) – Level 3: **£1,200.00**

Severity – Level 4: **£5,000.00**

Band 3: Punishment/Deterrent

Severity Level 1: (Portfolio 1) and Level of penalty (x2)

The multiplier will be used as the following does not apply, as Band 1 & 2 are not scored as level one or below.

- *Severity, Culpability and Harm have all scored level one or below and,*
- *It is a landlords first offence (this includes penalties in other LA areas), and,*
- *The penalty relates to a single offence and not multiple offences.*

Band 4: Removal of Financial Gain

Financial gain – £500 per month in rent (£2,000.00 total over 4 months breach) = Severity Level 3: **£2,500.00.**

Total: £1,200 + £1200 +£5000 = £7,400

£7,400 x2 for the multiplier = £14,800

£14,800 + £2,500

Grand total = £17,300

E.16 Housing and Planning Act 2016 - Banning Orders

E.16.1 A Banning Order can be sought from the First-tier Tribunal to ban a person (Banning Orders can also be made to ban certain bodies corporate) from the following:

- Letting housing in England
- Engaging in letting agency work
- Engaging in property management work or
- Doing two or more of those things

E.16.2 A Local Authority can apply for a Banning Order who has been convicted of a banning order offence. The local authority will advise the person that a banning order is to be applied for and explaining why, the proposed length of the banning order and invite the person to make representations within 28 days. Any representations will be considered and determine if the order is to be sought. The Tribunal will consider the following:

- (a) the seriousness of the offence of which the person has been convicted,
- (b) any previous convictions that the person has for a banning order offence,
- (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
- (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.

E.15.3 Any Banning Order granted must be added to the Rogue Landlord database.

E.15.4 Housing and Planning Act 2016 - Rent Repayment Orders

E.15.5 A Rent Repayment Order is an order made by the First-tier Tribunal requiring a landlord/agent to repay a specified amount of rent to either the tenant or to the local authority if housing benefit has been paid. Statutory guidance issued by DCLG under Section 41 of the Housing and Planning Act 2016 sets out the requirements for Rent Repayment Orders. A rent repayment order can be sought from the First-tier Tribunal for the following situations:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;3
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

E.15.6 The First-tier tribunal shall determine if the rent repayment order is to be granted whether or not the person has been convicted of any of the above offences or not. The tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. The maximum repayment order to be recovered is capped at 12 months.

E.15.7 The Local Authority will consider whether there is sufficient evidence to secure a conviction based on the guidance issued by the Crown Prosecution Service *Code for Crown Prosecutors*.

- E.15.8 The Local Authority will determine when a rent repayment order shall be applied for on a case by case basis and will take the following factors in account when considering how much rent should be sought to be recovered:
- E.15.9 Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).
- E.15.10 Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:
- a. Punishment of the offender. Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
 - b. Deter the offender from repeating the offence. The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
 - c. Dissuade others from committing similar offences. Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
 - d. Remove any financial benefit the offender may have obtained as a result of committing the offence. This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.
- E.15.11 A local authority can impose a civil penalty and apply for a rent repayment order for certain offences. These include:
- Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));
 - Offences in relation to licensing of houses under Part 3 of the Act (section 95(1))
- E.15.12 A local authority can also seek a rent repayment order at the same time prosecution the person for the same offences.
- E.15.13 If a rent repayment order is to be sought the person will be given a notice of intended proceedings, this must be served within 12 months of the date the landlord committed the offence to which the order relates. The notice of intended proceedings must:

- Inform the landlord that the local authority is proposing to apply for a rent repayment order and explain why
- State the amount the local authority is seeking to recover
- Invite the landlord to make representations within 28 days.
- After 28 days the local authority will consider any representations made within the notice period and then an order can be applied for from the First-tier tribunal.

E15.14 If a local authority becomes aware that a person who is a landlord has been convicted of any offence listed above and the offence was committed in their area, the local authority **must** consider applying for a rent repayment order.

E.15.15 A tenant can apply for a rent repayment order and does not have to follow the same process. Where a tenant approaches East Northamptonshire Council to assist them in seeking the order, this will be considered on a case by case basis.

E.15.16 Any income received by a Local Authority from a civil penalty can be retained by the Local Authority provided that it is used to further the local authority's statutory function in relation to their enforcement actions covering the private rented sector as specified in the regulations.

E.16 Rogue Landlord Database

E.16.1 Any landlord who has received a banning order under the Housing and Planning Act 2016, been convicted of a banning order offence or has received 2 or more civil penalties over a 12 month period will be recorded on the database.

E.17 Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended

E.17.1 Any properties rented out in the private rented sector must have a minimum energy performance rating of E on an Energy Performance Certificate (EPC). This requirement applies to all new and renewals of tenancies as of 1st April 2018, from April 2020 it will apply to all existing tenancies as well. Any property rented out in breach of these requirements will be subject to a civil penalty of up to £4,000.

E.17.3 Exemptions

E.17.4 A landlord may register their property on the PRS Exemptions Register if:

- all the "relevant energy efficiency improvements" for the property have been made (or there are none that can be made) but the property remains sub-standard (regulation 25)
- a recommended measure is not a "relevant energy efficiency improvement" because the cost of purchasing and installing it would exceed the £3,500 cap (inc. VAT) ("high cost" exemption)
- Relevant energy efficiency improvements - wall insulation (regulation 24(3)) – recommended measures not appropriate for specific property
- Third party consent exemption (regulation 31) – required consent has not been given
- Property devaluation exemption (regulation 32 and regulation 36 (2)) – an independent RICS Surveyor assess that installation of measures will devalue the property
- Temporary exemption due to recently becoming a landlord (regulation 33 & regulation 36 (2))

E.17.5 The Local Authority will review entries on the Exemptions Register to ensure that they have been correctly entered and that the exemption criteria is met. If a landlord is in breach of the prohibition on letting a sub-standard property, including where they may have supplied misleading or incomplete information or evidence to the Register, we may serve a compliance notice (requesting information from that landlord which will help us to decide whether that landlord has breached the prohibition) or issue a penalty notice.

E.17.6 Compliance Notice (Regulation 37)

E.17.7 Information from the landlord may be requested as part of the investigation, a compliance notice can be issued where a breach is suspected at anytime in the last 12 months. Information such as the following maybe requested:

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property;
- any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions.

E.17.8 Failure to provide the requested information may result in a penalty notice being issued.

E.17.9 Financial Penalties (Regulations 38 – 45)

E.17.10 East Northamptonshire Council will impose the maximum penalties for each of the following:

- Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.
- Where the landlord has let a sub-standard property in breach of the Regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.
- Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.
- Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

E.17.11 Where penalties are imposed under more than one of the above, the total amount may not exceed £5,000 per property and per breach of regulations.

E.17.12 Publication of Penalty (Regulation 39)

E.17.13 Where a penalty has been issued East Northamptonshire Council will publish the details of the breach on the publicly accessible part of the PRS Exemptions Register. The information will be available for view by the public for at least 12 months.

E.17.14 Recovery of Financial Penalties (Regulation 45)

E.17.15 If a financial penalty imposed has not been paid East Northamptonshire Council may take the landlord to court to recover the money. A certificate signed by the Section

151 Officer of East Northamptonshire Council is required confirming that the penalty has not been paid is accepted as evidence of non-payment.

E.17.16 Appeals (Regulation 43 and 44)

- E.17.17 Appeals by landlords must be made to the First Tier Property Tribunal, any appeal can be made for the following reasons:
- the penalty notice was based on an error of fact or an error of law,
 - the penalty notice does not comply with a requirement imposed by the Regulations
 - it was inappropriate to serve a penalty notice on them in the particular circumstances.

E.18 Other Notices

E.18.1 The Council will consider all relevant legislation to help protect occupiers of dwellings and protect their health and safety. When considered appropriate action the above legislation will be the primary approach but there may be times when other legislation outside those above must be considered. In such cases the officers must justify why different legislation is being considered and why it is preferable to use it in individual cases. In every case the general rules of enforcement above must be followed and there must be;

- a significant contravention(s) of legislation;
- no confidence in the successful outcome of an informal approach;
- history of non-compliance with informal action or;
- if the standards are generally poor with little management awareness of statutory requirements;
- the consequence of non-compliance could be potentially serious to public health;
- if the effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

E.19 Guidance

E.19.1 There is a wide range of government guidance that cover our enforcement activities from Government and its agencies. We will consider this guidance when formulating our policies and procedures. Enforcement officers will follow our policies and procedures and where appropriate will take the relevant government guidance into account on a case-by-case basis. The Department of Communities and Local Government (DCLG) produce a number of leaflets, available on their [website](#), that explain in simple terms the legislation, disrepair, Empty Dwelling Management Orders and tenancy issues.

Appendix F – Waste, Litter and Dog Control

F.1 In addition to the General Enforcement Policy the following section applies to waste enforcement specifically.

F.2 Transport of Controlled waste Control of Pollution (Amendment) Act 1989

F21 Section 5 of the act duly authorises Officers to stop any person appearing to him to be or to have been engaged in transporting controlled waste and require that person to produce his authority or, as the case may be, his employer's authority for transporting that waste. In addition Officers are able to search any vehicle that appears to him to be a vehicle which is being or has been used for transporting that waste.

F22 For the purposes of this section a person's authority for transporting controlled waste is—

- (a) a certificate of registration as a carrier of controlled waste.
- (b) such evidence as may be prescribed that he is not required to be registered as a carrier of controlled waste.

F23 Where an individual is found to be unable to produce the authority to transport controlled waste they will have committed an offence and may be subject to a summary conviction and a fine of up to £5000.

F.3 Transport of Controlled waste Environmental Protection Act 1990

F31 Section 33 of the act prohibits any individual to

- a. deposit or knowingly cause or permit controlled waste in or on any land where the appropriate environmental permits are not in place.
- b. cause waste to be submitted to an operation that is not carried out in accordance with an environmental permit
- c. treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

F32 It is also an offence to deposit controlled waste from a motor vehicle; where material is deposited from a motor vehicle the person who controls the vehicle or is in a position to control the use of the vehicle shall be treated as knowingly deposited the waste whether or not he gave any instructions for this to be done.

F33 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £50,000

F34 Section 34 of the act makes it the duty of the person who produces, carries or keeps waste, or has control of waste produced to take all measures as are reasonable to;

- Prevent offences being committed under section 33
- Prevent any contravention of any environmental permit regarding the management of waste.

- Prevent the escape of waste from their control
- Ensure secure transfer of the waste using authorised persons.

F35 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £5000

Clean Neighbourhoods and Environment Act 2005

F36 Pursuant to F.2.1, section 38 of the CNEA allows the Authority to anyone who is unable produce such evidence in accordance with the requirement to produce authority to transport controlled waste officers may give that person a notice offering him the opportunity of discharging any liability to conviction for an offence by payment of a fixed penalty of £300.

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

F3.7 From May 2016, in accordance with the above regulations, an individual committing an offence as described in section F3.3, may have the opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty of £400.

F3.8 Where there is an offence committed as described in F3.3, the officer will consider the nature and scale of the waste accumulation and potential costs for removal. Where accumulations are likely to cost in excess of £400 for removal, offences will be considered significant and will no longer be suitable to be discharged as described in F3.7.

F.4 Waste Collection

Environmental Protection Act 1990

F41 Section 46 of the act makes it the duty of an individual to comply with the individual requirements of the waste collection arrangements of the area.
An resident may be fined for failing to comply with those requirements following there being reasonable notice given to the resident of the requirements of the collection arrangements and a demonstrable effort has been made to ensure the resident has been adequately informed of those requirements.

F.5 Littering

Environmental Protection Act 1990

F51 Section 87 of the act makes it an offence to throw down, drop or otherwise deposit any litter on relevant land.

F52 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £2000, or they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £75.

F53 Section 92 of the act allows the authority to serve a 'litter clearing' notice to address accumulations of waste or litter which is considered detrimental to the amenity of the locality.

F54 Section 93 of the act allows the authority to serve a 'street litter control notice' with a view to prevent accumulations of litter or refuse in and around any street or open land adjacent to any street, imposing requirements on occupiers of premises in relation to such accumulations.

F.6 Responsible Dog Ownership

Environmental Protection Act 1990

F6.1 Section 149 of the act requires the Council to collect and detain any dog found in a public place. Any persons who claim ownership of a dog found to be straying will be required to pay any costs which have been incurred as a result of the collection and detention of that dog.

Environmental Protection (Stray Dogs) Regulations 1992

F6.2 The Council will impose a fine for Stray dogs which will be payable by the owner upon return of the animal.

F6.3 The Council will seek to recover costs of kenneling and any treatments which are required to ensure the wellbeing of animals collected as strays.

Clean Neighbourhoods and Environment Act 2005

F6.4 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £2000, or they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £100.

F6.5 Section 55 of the act allows an authority to make a 'Dog Control Order' on relevant land, these orders can prohibit activity of the area upon which an order is imposed. The offences may relate the following;

- fouling of land by dogs and the removal of dog faeces;
- the keeping of dogs on leads;
- the exclusion of dogs from land;
- the number of dogs which a person may take on to anyland.

F6.6 Where an individual is found to have committed an offence under this section they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £75.

Dogs (Fouling of the Land) Act 1996

F6.7 Section 3 of this act makes it an offence to allow an animal under their charge to foul and fails to remove the deposit from the land.

F.6.8 Where an individual is found to have committed an offence under this section they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £75.

The Microchipping of Dogs (England) Regulations 2015

F6.9 Any person who keeps a dog has mandatory responsibility with regard to microchipping and registering the details of the keeper and the dog, with an approved microchip database. Section 13 of the regulations makes it an offence for the keeper of a dog to fail to;

- Microchip a dog within twenty one days of being serviced with a notice to do so.
- Update the keeper details where the ownership of a dog has changed
- Implant a microchip unless they have completed an approved training course for that purpose
- Update the Keeper details within seven days of being served with a notice to do so.
- Obstruct an authorised officer from arranging microchipping for an unchipped dog.

F6.10 Failure to comply with a notice is an offence punishable on summary conviction with a fine of £100

F.7 Nuisance Vehicles Refuse Disposal (Amenity) Act 1978

F7.1 Section 2 of this act makes it an offence to;

- abandon on any land in the open air, or on any other land forming part of the highway a motor vehicle or anything which formed part of a motor vehicle and was removed from it in the course of dismantling the vehicle on the land; or
- abandon anything other than a motor vehicle, which was brought to the land with the purpose of abandoning it there.

F7.2 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £2000, or they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £200.

Clean Neighbourhoods and Environment Act 2005

F7.3 Section 3 of this act makes it an offence to leave two or more vehicles parked on the highway, which are advertised for sale.

F7.4 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £2000, or they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £100

F7.5 Section 4 of this act makes it an offence to carry out repairs, maintenance, or installation of accessories to a vehicle, where that action is for gain or reward and is not as part of emergency repairs to a vehicle which has broken down.

F7.6 Where an individual is found to have committed an offence under this section they may be subject to a summary conviction and a fine of up to £2000, or they may be offered an opportunity to discharge the liability by way of a fixed penalty notice of £100.

F.8 Graffiti or Flyposting Anti-Social Behaviour Act 1993

F8.1 Section 43 of the act allows an officer, where he has reason to believe that a person has committed an offence of graffiti or flyposting, to discharge the liability by way of a fixed penalty notice of £75.

F.9 Anti Social Behaviour, Crime and Policing Act 2014

F9.1 The above act replaces a number of powers that have been available to the Council and Police for dealing with anti social behaviour within communities.

F9.2 Community Protection Notices (CPN) – The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti social behaviour which spoils the community's quality of life. This power will be used by the Council and Police in consultation with each other. If the behaviour has a detrimental effect on the quality of life of those in the locality, or is of a persistent and continuing nature and is unreasonable. A written warning will be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising what the consequences will be if it does not stop.

F9.3 If the behaviour continues a CPN will be issued, which will specify what is to be stopped or undertaken in order to avoid further anti social behaviour. Failure to do so may result in work in default being undertaken by the Council and the costs reclaimed from the person responsible. A breach of a CPN is a criminal offence, a fixed penalty of £100 may be issued and/ or a prosecution. A fine of £2,500 for an individual or up to £20,000 for businesses may be issued by the courts.

F9.4 **Closure Powers** – The purpose of this power is to allow the council to quickly close a premises which is being used, or likely to be used, to commit nuisance or disorder. The council can issue a closure notice requiring closure of the premises for 48 hours or a closure order for up to six months. The council must be satisfied that nuisance to the public will occur in the next 48 hours or there will be disorder near those premises. For a closure order the council must be satisfied that there will be disorderly, offensive or criminal behaviour, serious nuisance to the public from that premises.

F9.5 A closure notice is issued by the council however a closure order must be sought from the courts. The breach of the notice or the order is a criminal offence. Breach of a notice carries a penalty of up to 3 months in prison and a breach of an order up to six months in prison. Both carry an unlimited fine for residential and non-residential premises.

F9.6 Other powers – the legislation includes a number of other powers, which include but are not limited to the following:

- Public Spaces Protection Orders
- Civil Injunctions
- Criminal Behaviour Order

The council will use these powers where it is deemed appropriate on a case by case basis and in conjunction with the police and other relevant agencies.

F.10 The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

F.10.1 Pursuant to F.5. It is an offence to allow litter to escape a vehicle on the authority's land. East Northamptonshire Council will issue fixed penalty notice of £100 to the registered keeper of that vehicle within 35 days of the witnessed event.

F.10.2. When a fixed penalty notice is issued, the registered keeper shall have 14 days to pay or submit an appeal within 28 days. If no contact is made, and after 14 days of the event, the amount will increase 100% with effect from the day after the last day of the fixed penalty payment period.

F.10.3 If an appeal is submitted and then rejected or withdrawn, an additional 28 days is given for the registered keeper to pay the fixed penalty notice. In a case where the person does not make any representation, the period of 28 days begins with the day on which the penalty notice is given. In a case where the person makes representation and the authority gives notice of rejection, the period of 28 days begins with the day on which the authority gives the notice of rejection.

APPENDIX G: Community Safety functions in respect of Anti-Social Behaviour

- G.1 In addition to the General Enforcement Policy the following section applies to enforcement of Anti-Social Behaviour legislation through the Community Safety functions.
- G.2. Each of the powers has a specific test, set out in the Act that has to be met if a formal notice or sanction is required. The choice of enforcement options will depend on the type of anti-social behaviour being committed, the evidence demonstrating that the test for each power has been met and whether there is a realistic chance of securing a conviction if a notice has been breached by the offender. The range of enforcement options is set out below:-
- No action
 - Informal interventions
 - Obtaining a Civil Injunction
 - Issuing a Community Protection Warning (in the case of the Community Protection Notice power)
 - Serving a Community Protection Notice (CPN)
 - Obtaining a Criminal Behaviour Order (CBO)
 - Prosecution for the breach of a CPN or CBO

G.3 No action

All complaints about ASB will be fully investigated. In some cases officers can give advice to a complainant, which may involve trying to talk issues through with their neighbours or the people causing the problem. Sometimes perpetrators of ASB do not realise that their behaviours are causing a problem. If things can be corrected or resolved through advice then East Northamptonshire Council may consider taking no enforcement action.

Detailed records will still be taken even if no action is taken.

G.4 Informal interventions

Where advice appears not to work and a firmer intervention could help resolve a conflict, East Northamptonshire Council will look towards informal interventions. The use of informal interventions will depend on the circumstances of the case. In the case of a verbal warning, this would be used to warn an offender that a formal Community Protection Warning letter (for the CPN power) would be issued to them if they do not stop what they are doing. The consequences of not adhering to the warning letter would result in a formal CPN being issued.

If available, mediation might be considered as a way of getting the parties to try and resolve their differences.

G.5 Obtaining a Civil Injunction

The injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 is a civil power which can be applied for to deal with anti-social individuals. The injunction can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.

G.6 Community Protection Warning Letter

Where verbal warnings or other informal interventions have not worked or are unlikely to work and the offender's behaviour meets the test for the CPN power, East Northamptonshire Council will consider issuing a formal Community Protection Warning Letter. This will state why the offender's behaviour is considered to be causing harassment, alarm or distress to the victim and what they must do to stop it.

G.7 Community Protection Notice (CPN)

If an offender fails to comply with a Community Protection Warning Letter they will be served with a formal Community Protection Notice (CPN). Breach of a CPN will constitute a criminal offence.

G.8 Obtaining a Criminal Behaviour Order (CBO)

Where an offender's behaviour is serious enough for them to be convicted of a criminal offence, examples would be: threatening violence against the others in the community or persistent drunk and aggressive behaviour, a Criminal Behaviour Order (CBO) may be applied for if it considered reasonable and proportionate by East Northamptonshire Council.