



ENVIRONMENT AND PUBLIC PROTECTION

ENFORCEMENT POLICY 2014

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EXECUTIVE SUMMARY

This Enforcement Policy provides guidance to both those affected by enforcement action and officers of the Council in relation to the approach they are to take in respect to the application of the legislative provisions enforced by Bracknell Forest Council's Environment and Public Protection Division (EPPD).

The Council's primary objective is to achieve regulatory compliance based on the principles of Good Regulation. We recognise that prevention is better than cure. However, where circumstances warrant, formal action will be taken. There is a wide range of options available to us but we will look to enforce legislation in a way that is relevant and proportionate to the offence.

The Policy is linear and is built around a process of escalation. In cases where the contraventions are severe, see para 6.1.3 the Policy allows discretion to depart from this linear process. Enforcement leading to prosecutions will normally be related to proven risk, statutory nuisance or other similar situations affecting any individual or the environment and not be used as a punitive response to minor breaches.

The Policy sets out the options available which range from no action to prosecution and the Policy explains the approach adopted when carrying out the duty to enforce a wide range of legislation. It is written in general terms as it is intended to be applied to a wide range of responsibilities falling to the Division.

The Policy is designed to give clarity as to the Council's objectives and the methods for achieving compliance and it also clarifies the criteria that will be considered when deciding what the most appropriate response is to a potential breach of legislation.

The Policy sets out a decision making process that has due regard to current Statutory Guidance and Codes of Practice, particularly the Regulators' Code, the Code for Crown Prosecutors, the Human Rights Act and Data Protection Act.

The Council's Scheme of Delegation sets out the powers of the Director of Environment, Culture and Communities. Where appropriate these are sub delegated to the Chief Officer: Environment and Public Protection. Officers are authorised by the Chief Officer for the purposes of enforcing specific legislation conferred on the Council having due regard to their qualifications and experience.

1 INTRODUCTION

- 1.1 Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved.

In accordance with the Legislative and Regulatory Reform Act 2006, Part 2, we will exercise our regulatory activities having regard to the principle of Good Regulation when exercising our functions in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,*
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,*
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,*
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and*
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.*

- 1.2 This document has been prepared with regard to the current principal legislation and statutory guidance including:

[The Regulatory Enforcement and Sanctions Act 2008](#) (The RES Act)

The RES Act, as amended established the Better Regulation Delivery Office (BRDO). The Act imposed upon the Council a duty to:

- (a) have regard to any guidance given to a Local Authority by BRDO,*
- (b) comply with guidance where we are directed to do so by BRDO, and*
- (c) have regard to any list of enforcement priorities published by BRDO*

The RES Act additionally established the Primary Authority scheme. If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership we will comply with requirements of the Act when we are considering taking enforcement action. See Section 9.

[Co-ordination of Regulatory Enforcement \(Enforcement Action\) Order 2009 SI665/2009](#) (The CRE Enforcement Order).

[Co-ordination of Regulatory Enforcement \(Procedure for References to LBRO\) Order 2009 SI670/2009](#) (The CRE LBRO Order).

[Legislative and Regulatory Reform Act 2006](#) (LRRRA).

[Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)

[Regulators' Code](#) (RC) (April 2014).

Bracknell Forest Council had regard to the Regulators Code in the preparation of this policy.

Human Rights Act 1998

Bracknell Forest Council is a public authority for the purposes of the Human Rights Act 1988. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1988. See section 12.

Code for Crown Prosecutors

When deciding whether to prosecute Bracknell Forest Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code for Crown Prosecutions is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.. See section 7.

Data Protection Act 1998

Where there is a need for Bracknell Forest Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

- 1.3 *This policy was developed following consideration of both national legislation and guidance, in addition to comments received from local residents, businesses, officers of the Council and other stakeholders such as other agencies and voluntary organisations. Any further comments can be made as detailed in section 15, and will be taken into consideration during the next scheduled revision.*

2 LEGAL STATUS OF THE ENFORCEMENT POLICY

- 2.1 The Executive approved this policy on (to be determined).
- 2.2 This Policy is intended to provide general guidance for officers, businesses, consumers and the public as regards the approach that will normally be taken in relation to the enforcement of the relevant statutory provisions. It does not fetter the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

3 SCOPE AND MEANING OF 'ENFORCEMENT'

- 3.1 This Policy applies to all the legislation enforced by Officers of the Environment and Public Protection Division. This includes Regulatory services such as Environmental Health, Trading Standards and Licensing.
- 3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.

3.3 *For the purposes of The RES Act the term 'enforcement action' has been given a general statutory definition, which is:*

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

3.4 A list of specific 'enforcement actions' is provided in article 2 of the CRE Enforcement Order, which applies to Part 2 of The RES Act and the Primary Authority Scheme.

3.5 *Through this document the Council intends to enable Enforcement Officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. The Council also aims to ensure that its own Enforcement Officers interpret and apply their legal requirements and enforcement policies consistently and fairly.*

3.6 Officers will seek to raise awareness and increase compliance levels by making public details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so.

4 GENERAL PRINCIPLES

4.1 Our principles are informed by The Regulators' Code and the Guidance of BDRO as to how to apply this document

4.2 *The six principles of the Regulators Code are:*

- 1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.*
- 2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.*
- 3. Regulators should base regulatory activities on risk.*
- 4. Regulators should share information about compliance and risk.*
- 5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.*
- 6. Regulators should ensure that their approach to their regulatory activities is transparent.*

4.3 Prevention is better than cure and the regulatory role includes working with businesses to advise on and promote opportunities to effect compliance as appropriate.

4.4 Where formal action is considered necessary each case will be considered on its own merits.

4.5 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code

4.6 *In accordance with the Regulators' Code, the approach of the EPPD to the*

sanctions and penalties available to it, will aim to:

- (a) change the behaviour of the offender;*
- (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;*
- (c) eliminate any financial gain or benefit from non-compliance;*
- (d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;*
- (e) be proportionate to the nature of the offence and the harm caused;*
- (f) restore the harm caused by regulatory non-compliance, where appropriate; and*
- (g) deter future non-compliance.*

For more information about the Regulators' Code visit:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262915/13-1016-regulators-code.pdf

- 4.7 Every effort will be made to ensure that enforcement decisions will be taken in a fair, independent and objective way. They will not be influenced by issues such as ethnicity, national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will also not be affected by improper or undue pressure from any source.
- 4.8 In making decisions we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss. Those views may influence the decision as to the form of action to take.
- 4.9 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the [Police and Criminal Evidence Act 1984](#), the [Criminal Procedure and Investigations Act 1996](#), the [Human Rights Act 1998](#), the [Regulation of Investigatory Powers Act 2000](#), [Criminal Justice and Police Act 2001](#), and the [Crime and Disorder Act 1998](#) and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities. These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.
- 4.10 The progress of individual investigations will be dependant upon the specific circumstances involved, but will be undertaken mindful of any relevant statutory time limit for investigation. Where no specific time limit is given in law, we will progress investigations in a timely manner. Alleged offenders and witnesses will be updated as appropriate.
- 4.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented

5 NOTIFYING ALLEGED OFFENDERS

- 5.1 Where information is received (for example from a complainant) that may lead to enforcement action against a business or individual, we will notify that business or individual as soon as is practicable of any intended enforcement action which may include in some instances the seizure of goods and documents and arrest. The exception to this is where it is considered that in doing so the action could impede an investigation or pose a safety risk to those concerned or the general public.
- 5.2 *During the course of investigation various people, including alleged offenders, may be interviewed. Where interviews are conducted under specific powers this will be made clear the person being interviewed.*
- 5.3 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality of witnesses will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.
- 5.4 *Where requirements are made upon individuals or businesses, we will provide written details of any relevant rights to representation or appeal. This will include practical information, such as a contact name of the relevant officer.*

6 DECIDING WHAT LEVEL OF ENFORCEMENT ACTION IS APPROPRIATE

A number of factors are considered when determining what enforcement action to take:

6.1 Overview of Levels of Enforcement Action:

- 6.1.1 There are a number of potential enforcement options. The level of the action taken can vary from no action through to proceedings in Court. Examples of main types of action that can be considered are shown below:

- No action
- Informal Action and Advice
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notice
- Forfeiture Proceedings
- Seizure of Goods/Equipment
- Injunctive Actions or other civil sanctions
- Refusal, revocation, suspension or review of a licence
- Simple Caution
- Prosecution
- Statutory Orders
- Restorative Approach
- Emergency Remedial Action
- Proceeds of Crime Applications

- 6.1.2 Under normal circumstances, a process of escalation will be used with a view to achieving compliance. Exceptions would include where there is a serious risk to public safety or the environment; the offences have been committed deliberately, persistently, negligently, involve deception or where there is significant economic detriment. The Council reserves the right to escalate its level of enforcement action,

having regard to the criteria in paragraph 6.1.3 of this policy

6.1.3 *In assessing what enforcement action is necessary and proportionate, consideration will be given to relevant information collected during the course of the investigation. Consideration will be given to, amongst other things:*

- (a) The seriousness of the compliance failure.*
- (b) The past and current performance of any business and/or individual concerned.*
- (c) Any obstruction of officers*
- (d) The risks being controlled*
- (e) Statutory guidance.*
- (f) Codes of Practice.*
- (g) Any legal advice.*
- (h) Policies and priorities of the Government, the Council, EPPD services and related committees.*
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.*
- (k) The impact of a Primary Authority Agreement on response to breaches*
- (l) The size or capacity of the business*
- (m) The attitude of the business to the non compliance and their willingness to resolve non compliance*
- (n) Specific decision making tools such as the HSE's Enforcement Management Model.*

6.1.5 *Where non-compliances are identified we are committed to clearly providing information and advice regarding the non-compliance, any related actions required or decisions taken with reasons where appropriate. Where appropriate, and in accordance with this policy, we additionally welcome productive dialogue with those affected by our decisions regarding identified non-compliances.*

6.2 No Action

6.2.1 In some circumstances, contraventions of the law may not justify any action. Examples include where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. Such decisions will take into account the public interest principle and in such cases we will advise the offender and any 'victim' of the reasons for taking no action.

6.3 Informal Advice, Guidance and Support

6.3.1 For minor breaches we may only give verbal or written advice. We will clearly identify any contraventions and give advice on how to put them right. We will include a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Subsequent follow up actions to confirm compliance may be undertaken and any continuing or repeated breaches will be reconsidered in accordance with this policy.

6.3.2 *Where an offender approaches us for advice and where it is appropriate we are also committed to providing advice without the automatic triggering of enforcement*

action. Informal action and advice is our preferred option, but this will be balanced by the other considerations detailed within this policy.

- 6.3.3 Where appropriate we will also advise offenders about 'good practice'. In doing so we will clearly distinguish between what they must do to comply with the law and what is advice only.

6.4 Fixed Penalty Notices

- 6.4.1 Certain offences are subject to fixed penalty notices (FPNs). A FPN can be offered as an alternative to going to Court. They are available for some low level offences and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to administer an FPN on a first occasion without issuing a warning. If a FPN is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach. Payment of a FPN does not provide immunity from prosecution in respect of similar or recurrent breaches.
- 6.4.2 Bracknell Forest Council is only able to issue FPNs where it has specific powers to do so. If available, their use is at our discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a FPN.

6.5 Penalty Charge Notices

- 6.5.1 Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

6.6 Failure to accept a FPN and/or a PCN

- 6.6.1 *In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, EPPD will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation.*
- 6.6.2 *In circumstances where a person or body corporate fails to accept or pay a PCN, then in order to maintain the integrity of this legislative regime, EPPD will consider an escalation of enforcement action. This will include consideration of civil action to recover the debt incurred by the EPPD.*

6.7 Statutory (Legal) Notice

- 6.7.1 *Certain legislation allows notices to be served requiring a person or business to take specific actions, provide information or cease certain activities. A statutory Notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from reoccurring. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Such Notices are legally binding.*

6.7.2 *All Notices issued will include details of any applicable Appeals Procedures.*

6.7.3 *Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or where appropriate may allow works to be carried out in default. This means that if a Notice is not complied with we have the power to carry out any necessary works to satisfy the requirements of the Notice ourselves. Where the law allows, we may then charge the person/business served with the Notice for all costs we have reasonably incurred in carrying out the work. The Council will normally seek to recover all of its costs.*

6.8 Seizure

6.8.1 Certain legislation enables authorised officers to seize goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt itemising the goods/equipment that have been seized and advise them of their statutory rights.

6.9 Forfeiture Proceedings

6.9.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the magistrates' courts or seek from the defendant a voluntary forfeiture.

6.10 Injunctive Actions and other Civil Sanctions

6.10.1 Injunctive action maybe used to deal with repeat offenders, dangerous circumstances or serious consumer /environmental/public health detriment.

6.10.2 Proceedings under the Enterprise Act 2002 proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.
- (d) Court Orders.
- (e) Contempt Proceedings.

6.10.3 Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, where appropriate, an ASBO or CRASBO will be sought to stop the activity.

6.11 Refusal, Suspension, Revocation and Review of Licence/Permits

- 6.11.1 Where there is a requirement for a business or person to be licensed by the local authority, the licence will be determined in accordance with Council procedures including receipt of representations or objections to that application. Where representations or objections are received and in accordance with the relevant legislation or Council procedure members of the Licensing Committee, may hear the case and decide to grant, grant with conditions, or refuse the licence application.
- 6.11.2 The grounds for Refusal, Suspension or Revocation of a Hackney Carriage or Private Hire Licence (Local Government (Miscellaneous Provisions Act 1976) are set out in the Guidance Notes and Conditions for Hackney Carriage and Private Hire Vehicle Owners, Operators and Drivers: <http://www.bracknell-forest.gov.uk/guidance-notes-and-conditions-taxis.pdf>
- 6.11.3 Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to members of the Licensing Committee are:
- To modify the conditions of the Licence
 - To exclude a licensable activity from the scope of the Licence
 - To remove the Designated Premises Supervisor
 - Suspend the Licence for a period not exceeding three months
 - Revoke the Licence
 - Issue a warning letter
 - No action
- 6.11.4 Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to members of the Licensing Committee are:
- Revocation of the Licence.
 - Suspend the Licence for a specified period not exceeding three months.
 - Exclude a mandatory condition attached to the Licence, remove or amend exclusion.
 - Add, remove or amend a condition.
- 6.11.5 Under the Housing Act 2004 there is no provision for the council to receive objections relating to HMO applications. Where an HMO licence is refused or revoked the applicant or licence holder has the right of appeal to a Residential Property Tribunal (RPT).
- 6.11.6 Under the Environmental Protection Act the Council has powers to revoke, suspend and prosecute for non-compliance with Environment Permits (EPs). These powers can be used for incidences of serious pollution and none payment of fees.

6.12 Simple Caution

- 6.12.1 Bracknell Forest Council has the power to issue Simple Cautions as an alternative to prosecution. A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For more information about a Simple Caution visit:
http://www.cps.gov.uk/legal/a_to_c/cautioning_and_diversion/

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

- Sufficient evidence must be available to prove the case.
- The offender must admit the offence.
- It must be in the public interest to use a Simple Caution.
- The offender must be 18 years or over.

6.12.3 Officers will not offer a Caution where the offender has received a Simple Caution for a similar offence within the last 2 years.

6.12.5 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

6.12.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

6.12.5 Details of all cautions issued are a matter of public record.

6.13 Prosecution

6.13.1 A prosecution will normally be considered where none of the other forms of enforcement action are considered appropriate and the individual or organisation meets one or more of the following criteria:

- Deliberately, recklessly, negligently 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.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- An attempt to make financial gain at the expense of others.
- Assaulted or obstructed an Officer in the course of his/her duties.

6.13.2 When deciding whether to prosecute we will have regard to the provision of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions. Prosecution will only be considered where there is sufficient evidence to provide a realistic prospect of conviction. Before deciding that prosecution is appropriate we will consider all relevant circumstances carefully and have regard to the factors detailed in section 7.

6.13.3 *A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. Prosecution may lead in some circumstances to the disqualification of individuals from acting as company directors.*

6.14 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets in appropriate cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. The Council will seek to recover proceeds

of crime in appropriate circumstances.

6.15 **Deferred Prosecution Agreements (DPAs)**

DPAs have been introduced under the Crime and Courts Act 2013, adding an important new enforcement tool for certain prosecutors in tackling serious economic crime. Under a DPA a prosecutor charges a company with a criminal offence but proceedings are automatically suspended. The DPA may impose a number of requirements, including paying a financial penalty or agreeing to a compliance programme. At present only the Director of Public Prosecutions and the Director of the Serious Fraud Office can use DPAs, not local authorities. However when proceedings are suspended under a DPA no other person may prosecute the defendant for the alleged offence.

6.16 **Press releases**

In cases where emergency prohibition procedures have been taken and where public health and safety has been put at risk, consideration will be given to issuing a press release as a deterrent message that the service will not tolerate conditions which present an imminent risk to public health.

6.17 **Prohibition**

This power will be used where there are valid grounds (e.g. there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This course of action is usually associated with food and health and safety enforcement, but there will be other occasions, for example prohibiting the sale of unsafe goods, or part of a dwelling under housing legislation. Where appropriate, and in accordance with relevant guidance and legislation, these may be voluntary.

6.18 **Statutory Orders**

A range of Statutory Orders are available, for example under the Housing Act 2004 and Food Safety Act 1990 (and associated Regulations). In addition to Prohibition Orders the Council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it to take over the running of a property. Powers to take over the management of empty premises are contained in the Empty Dwelling Management Orders. The Council can take emergency remedial action to remove a Category 1 hazard where there is an imminent risk of serious harm to the health or safety of the occupiers. If such works are undertaken action will be taken to recover the costs incurred. Rights of Appeal exist in relation to these powers and compensation provisions also arise in some cases.

6.19 **Compulsory Purchase Orders**

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. The use of such powers will be on a case by case basis. The consent of the Secretary of State is required and compensation provisions for the owner apply.

6.20 **Restorative Approach**

- 6.20.1 This approach is available where the victim, the person harmed, and the offender agree to meet. The purpose of this meeting is to provide the opportunity for the offender to acknowledge and accept responsibility for the harm caused and for the

victim to have their say on the harm caused. If appropriate and required, suitable restorative actions and/or compensation may be agreed and the process may influence future behaviour and compliance.

- 6.20.2 Officers will consider if a Restorative Approach is appropriate and will listen to requests from both victims and offenders for such an approach to be adopted. Where a victim and offender are in agreement the Council, sometimes together with other enforcement partners, will consider facilitating a Restorative Approach to assist in the reduction of harm and/or the resolution of conflict. A Restorative Approach may be utilised separately or in conjunction with other enforcement approaches.

7 DETERMINING WHETHER A PROSECUTION OR SIMPLE CAUTION IS VIABLE AND APPROPRIATE

- 7.1 Two 'tests' will be applied to determine whether a Prosecution or Caution is viable and appropriate. The officers will follow guidance set by the Crown Prosecution Service when applying the tests.

For more information about the 'Code for Crown Prosecutors' visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

- 7.2 A Simple Caution or Prosecution will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

7.3 The Evidential Test

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

7.4 The Public Interest Test

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the propensity to prosecute but others may suggest that another course of action is more appropriate to the circumstances of the case.

8 WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN

- 8.1 The Council's constitution sets out the Council's Scheme of Delegation. Delegated authority has been given to authorised officers to act in varying capacity according to their professional background and seniority. Delegated authority is exercised within a decision making process that is managed to ensure that the most appropriate enforcement action is taken, based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government: [Scheme of Delegation](#)

8.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating officer(s)
- Line manager(s)
- Heads of Service
- Chief Officer: Environment and Public Protection
- Council solicitor(s)

8.3 Bracknell Forest Council is committed to ensuring all authorised officers act in accordance with this policy. In addition to the consultative measures detailed above, informal actions will be monitored via internal monitoring systems such as regular one-to-one meetings with officers in which cases are reviewed.

9. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

When a decision has been made to take enforcement action against a business and:

- (1) *That business is operating in more than one Local Authority and has 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.*

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

A Primary Authority has the right to object to our proposed action and in such circumstances either they or we may refer the matter to BRDO

10 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

10.1 Where there is a wider regulatory interest, enforcement activities with Environment and Public Protection will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

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

10.3 If you are a business operating in more than one local authority and you have chosen to have a registered Primary Authority Partnership under the Regulatory Reform Act 2006, we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under the Act also refer the matter to the relevant enforcement body if appropriate.

10.4 The Division will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

10.5 *The sharing of any specific information with other regulatory bodies and enforcement agencies will take place having due regard for the requirements of the Data Protection Act 1988.*

10.6 *Where Bracknell Forest Council provides services that fall under the enforcement remit of this Authority, we are committed to ensuring that all enforcement decisions are taken free from any conflict of interest. In order to ensure a consistent approach we remove any potential conflict of interest by locating such Council operated activities within completely separate divisions.*

11 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

11.1 *Regulatory Services undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making an enforcement decision.*

11.2 *If anyone wishes to complain about enforcement action, the conduct of individual staff or non-compliance with the Regulators Code, they may do so initially by contacting the relevant Team Manager through the Council's Customer Service Centre on 01344 352000 between 8.30am to 5.00pm Monday to Friday, or by writing to them at Bracknell Forest Council, Time Square, Market Street, Bracknell, Berkshire, RG12 1JD. If a complainant is dissatisfied with the result of their complaint to the Team Manager, the formal complaints procedure is on the Council's website: <http://www.bracknell-forest.gov.uk/your-Council/yc-complaints/yc-Council-complaints-procedure.htm>*

11.3 Publicity

Where appropriate the Council will publicise details of any convictions including Simple Cautions which could serve to draw attention to the need to comply with the law or deter others. Where relevant the media will also be provided with factual information about charges that have been laid before the courts.

12 PROTECTION OF HUMAN RIGHTS

12.1 This Policy and all associated enforcement decisions take account the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial
- Right to respect for private and family life, home and correspondence

13 REGULATION AND INVESTIGATORY POWERS ACT 2000

- 13.1 This Act provides a statutory framework for use of investigatory techniques including surveillance and gathering information on the use of covert operatives. For the purposes of this Policy the Chief Officer: Environment and Public Protection and the Head of Regulatory Services are authorisation officers.

14 REVIEW OF THE ENFORCEMENT POLICY

- 14.1 This Policy will be reviewed in the light of experience and in light of any relevant legislative changes by the Chief Officer: Environment and Public Protection. Where changes are required these will be referred through the appropriate management process. Such review will additionally consider any comments or suggestions received from others, including from local residents, businesses, officers of the Council and other stakeholders such as other agencies and voluntary organisations.

15 AVAILABILITY AND COMMENTS

This Policy will be made freely available on Bracknell Forest Council's website at <http://www.bracknell-forest.gov.uk/enforcement-policy.pdf>
Comments are welcomed at any time in writing to:

Chief Officer: Environment and Public Protection
Bracknell Forest Council
Time Square
Market Street
Bracknell
RG12 1JD